United States Court of Appeals

for the Second Circuit

APPENDIX

Original with Affidavit of Mailing

75-1147

B P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1147

UNITED STATES OF AMERICA,

Appellant,

—against—

ALFRED FAYER,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
MAY 30 1975
DANIEL FUSARO, CLERK
SECOND CIRCUIT

5

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

PAGE

Docket Entries A-1

Superseding Indictment (75 Cr. 43) A-3

Transcript of recorded conversation between Edward Goodwin and Harry and Rose Bernstein, dated February 8, 1972 ..... A-4

Transcript of recorded conversation among Edward Goodwin, Alfred Fayer, and Harry and Rose Bernstein, dated February 9, 1972 ..... A-76

Transcript of recorded telephonic conversation between Edward Goodwin and Alfred Fayer, dated February 12, 1972 ..... A-175

Trial transcript A-179

Judgment of acquittal (75 Cr. 43) A-369

★ U. S. Government Printing Office 1975— 614—250—109

Form No. 100
CRIMINAL DOCKET

75CR 43 A 1 WEINSTEIN, J.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: Gary Woodfield
vs.	
ALFRED FAYER	CLOSED
	For Defendant:

Did endeavor to influence a witness in a pending case before the Grand Jury etc.

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED				
			DATE	NAME	RECEIVED	DISBURSED	
Fine,			3/21/75	Govt's notice of appeal			
Clerk,							
Marshal,							
Attorney,							
Commissioner's Court,							
Witnesses,							

DATE	PROCEEDINGS
1-17-75	Before Dooling J - Superseding Indictment filed.
1/21/75	Notice from Probation Department filed that case will be called for sentencing on 1/24/75 at 9:30 A.M.
/24/75	Before WEINSTEIN,J.- Case called- Deft and counsel Jack Korshin present Govt's motion to consolidate 75CR43 with 72CR589 is granted- Deft arraigned and enters a plea of not guilty- Deft's speedy trial motion for dismissal of indictment argued- denied- So Ordered- Deft's motion for waiver of jury trial- decision reserved0 govt to submit letter
2-4-75	Before WEINSTEIN J - case called - deft & counsel Jack Korshin present - In this case the word superseding is deemed stricken - waiver of jury trial signed - deft advised of his rights - case set for Feb. 19, 1975 at 9:30 am for marking of documents and trial.

CR 43 A 2

PROCEEDINGS

filed
ase called - deft & counsel Jack Korshin present
9 and 75 CR-43 consolidated for trial - Trial
ial contd to Feb. 20, 1975.
ase called - deft & counsel present -trial
the deft not guilty in 72 CR 589 and the
ed. Decision reserved as to 75 CR-43. Submit

ase called- Deft and counsel present- Trial conclu
uilty as charged- Court findings of fact and concl
d- Deft discharged- The govt is directed to provid
ial and a typed transcript of the recordings to the

ent of acquittal filed
pt of 2/27/75 filed.
l filed
plicate of notice of appeal mailed to court of app
ach dated Feb. 19, 1975) ~~praecipe filed~~
fied and mailed to the Court of Appeals.
d from court of appeals for receipt of record

JD:GAW:sd
#743611

A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - -

UNITED STATES OF AMERICA

- against -

ALFRED FAYER,

Defendant.

- - - - - - - - - - - - - - - -

THE GRAND JURY CHARGES:

On or about and be
and the 12th day of February
of New York, the defendant A
to influence Edward Goodwin,
before a Grand Jury in the U
Eastern District of New York
witness, in that the said AL
Edward Goodwin to remain sil
investigation and to invoke
Grand Jury. (Title 18, Unit

David G. Trager
UNITED STATES ATTORNEY
Eastern District of New York

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. NY
JAN 17 1975
TIME A.M.
P.M.

3

- - x 75CR 43

SUPERSEDING
INDICTMENT

Cr. No.
(T. 18, U.S.C., §1503)

- - X

tween the 9th day of February 1972,
1972, within the Eastern District
LFRED FAYER corruptly did endeavor
a witness in a case then pending
nited States District Court for the
, in the discharge of his duty as a
FRED FAYER corruptly urged and advised
ent in connection with the Grand Jury
the Fifth Amendment before said
ed States Code, §1503).

A TRUE BILL.

Robert M. Fiedelman
FOREMAN.

GOODWIN and ROSE and HARRY BERNSTEIN, 2/8/72

EDWARD J. GOODWIN: Boy, you need a shoehorn.

HARRY BERNSTEIN: What is that a (inaudible)

G: Huh?

ROSE BERNSTEIN: What is that (inaudible)

G: Nobody here. Where is it? Down on the bottom? Oh, here?

HB: Yeah.

G: No, that's, that's for the seat.

HB: (Inaudible)

G: When? Here's the button. Ha. Ha. Here we go. Somebody found it.

RB: (Inaudible)

G: Jesus, I can't

HB: Can you make it?

G: Well, I don't know that.

RB: (Inaudible)

HB: You'll find it up under the seat back (inaudible)

G: I have my pencil in my hat and damn near,

RB: Oh, I, all right.

G: Damned near stabbed myself.

HB: (Inaudible)

RB: I'm not. It isn't

G: Oi Vay let me leave my hat off, huh?

Oh boy. Huh?

RB: What's doing?

G: Let's get out of here.

RB: Anything doing again? Did they, uh

G: I went down to see my attorney, you know, latter part of last week.

RB: Yeah.

G: And I went back to see him again a second time.

RB: Yeah.

G: Since the weekend. I didn't go to work yesterday. That damn snow was too much. You, you take your life in your hands when you're driving in that damn snow in Brooklyn.

RB: Yeah.

G: So I got over to see him for a few minutes.

RB: So?

G: Well, he wanted to know everything that's going on. You know what went on and what

didn't go on and what not. Now, he's known me for a long time and he represents me, so I ought to fill him in on some background material. Let him know exactly what he is up against. He says to me he wants to know exactly what happened. Did I ever accept any money? How much? Who I accepted it from. The whole bit.

RB: What did you tell him?

G: I was honest with him. I told him the truth.

HB: Did he

RB: You told him you did?

G: He represents me.

HB: Wrong.

RB: Wrong.

HB: Wrong.

G: Well, would do you mean?

HB: (Inaudible)

RB: (Inaudible)

G: He, he represents you. You, you gotta

RB: I'm sorry

HB: Wrong. I'm sorry, wrong, wrong, wrong.

RB: ED, you gonna put yourself in a noose.

HB: Wrong, ED.

RB: That's the worst thing you could have done.

HB: You're wrong.

G: Well look, he wants to know more, so this is what, one of the reasons I wanted to talk to you people.

RB: You don't

G: What do you, what do you tell him?

RB: What?

HB: You never got anything, which you never got.

RB: You don't. First. You don't need any attorney yet. This is what I wanted to tell you.

HB: We were up the, uh.

RB: Because I was up and spoke to my attorney.

G: Yeah

RB: Don't you see, they're digging and digging. Here's a man who never took five cents from anybody and we never gave him five cents.

G: Yeah

RB: And uh, FBI men came around and gave him a card and said, make a clean breast of things. Here's my card. When you're ready to talk,

talk. So he says, you, you shouldn't engage any attorney until you get a subpoena, if you get a subpoena. And if you don't talk, you wouldn't get a subpoena so fast. And if you got a subpoena.

HB: You take the fifth immediately.

RB: The answer is to take the fifth and the answer is, you never took anything from anybody.

HB: First of all

RB: And nobody ever gave you anything.

HB: Did we ever give you a check?

G: No.

RB: No.

HB: Did anyone ever give you a check?

G: No, you never gave me a check.

HB: Did you ever report anything that you've got money on income?

G: No

HB: So then you couldn't have taken it.

RB: You couldn't (inaudible)

HB: You couldn't have taken money.

G: Yeah, but look. Look, you know, you know ROLL (Phonetic) as well as I do

RB: Who?

G: KENNY ROLL.

RB: I don't know him.

G: Well

RB: I don't know him.

G: Well you, you know, you heard me mention him anyhow,

RB: Yeah

G: He's a good sharp attorney as far as I can see.

HB: I don't give a good Goddamn if he's

RB: I don't care

HB: We got a, we got a Judge RIFKIND (Phonetic) as an attorney, if you want to know the truth.

G: Yeah.

RB: He's one of the greatest.

HB: He is the greatest.

RB: He the KENNEDY'S, KENNEDY'S attorney.

HB: He is the greatest. Alright? Wait a minute, first of all, we've talked about this, when we get

RB: I never gave you five cents.

HB: First of all, secondly, you don't need an

attorney until you're called down with a subpoena. Thirdly, this judge says under no circumstances did he ever, but did he ever give anyone permission to take and testify in, in the Grand Jury.

RB: Yeah.

HB: Once someone wanted to testify in the Grand Jury, he made this fellow, take the fifth, where he only wanted him to take the fifth, eventually he took the fifth. But he made this fellow who wanted to testify, that if he was going to testify, to sign the acknowledgement that over his protest to take, to that he was.

RB: That he took the fifth, that he, uh, talked.

HB: That he would testify.

RB: That he would testify.

HB: First, now you will never testify in the Grand Jury. You take the fifth amendment. If you have any attorney that says he doesn't care then he's not your attorney anymore. No attorney in their right mind would let you testify.

G: Now look

HB: In the Grand Jury. Now wait a minute. Let me finish

G: All right, go ahead.

HB: Secondly, we never gave you money, you never received money from us. I don't care who ROLLINS (Phonetic) is or what. See.

G: Uh-huh

HB: Was he at the transaction?

RB: I'm surprised at you.

G: No.

HB: Did you, did you pay income taxes on something that you didn't receive? Did you?

G: Well, how can you pay income tax on something you didn't receive?

RB: You could (inaudible) know what happened to you? You have no right to tell anybody anything. Nobody.

HB: I don't understand you.

RB? Nobody

HB: I thought you were a pretty smart fellow.

G: Well look, maybe I'm naive, but you, you

doctor or your lawyer.

HB: Wrong.

RB: Did you ever, did you ever, no, no. Wrong.

HB: Wrong, wrong, wrong, wrong

RB: A doctor or what's, what's wrong with you is nothing.

HB: We never gave you any money. If you were on our payroll and we gave you a check every week and reported it and then reported it to the Internal Revenue, then you got to report these things.

RB: Did you tell the FBI men that you got money?

G: Of course not, I only saw them this one time. That's why I went to see ROLL.

HB: Your attorney I am sorry

RB: I'm sorry, but

HB: You did not get any money from us or anyone.

RB: Did you tell your attorney you got money from us?

G: Yes

HB: Wrong

RB: Wrong.

G: Because he's my attorney.

HB: Wrong

RB: Oh God, that's the worst thing you could have done.

HB: What's, what's the difference, he's didn't uh, he didn't say it. You tell your attorney you got confused in what you were saying. You did not say it.

G: Well.

HB: He says sure, who you're kidding. You tell him you didn't, you know, you know what you are by this?

G: Maybe I should put heads together with you and we will know what the hell we are talking about.

HB: All right then, I'll tell you. You got money?

G: Yeah

HB: If you got money from us, did you report it in the Internal Revenue?

G: No.

HB: You know, you know what you're up on? Say this whole thing is nothing and nothing.

RB: You could go to jail.

HB: An on Internal Revenue matter.

RB: You could, you could be put away. What's the matter with you, ED?

HB: What's the matter with you, ED?

RB: You could be put away.

HB: Did you report your Internal, uh, you got money?

G: No

RB: What's the matter with you?

G: So what do I do then?

RB: I would never tell them, ED.

HB: ED did you get

G: What do I tell them? You tell me.

RB: No

HB: You tell me you never got

G: We should get the stories together. You, you know we're talking the same language.

HB: You never got any, you never. All right, you never got any money from me.

G: Because

HB: You speak to him in person.

G: Yeah, I get con, I don't know whether you're you're saying that you didn't or what, or, or, or, or this is what we'll getting our

heads together

HB: (Inaudible) What did we tell you the other day?

RB: (Inaudible) what did I tell you the other day? Didn't I tell you I never gave you anything. And you never got from me.

HB: You're the strong one. Always (inaudible) What happened?

RB: And it's your word against KAPRAKI?

HB: What happened?

G: Huh?

RB: What, did you ever take a check from KAPRAKI?

G: What are you crazy?

RB: Well so one mistake, KAPRAKI could say a million things that you did, you took. You never got anything from us. She's a goddamn liar.

G: Ah, she's a shithead anyhow.

RB: She's a liar.

G: Yeah, her, her I don't worry about she's a shithead. What

RB: So who are you worrying about? Me? Harry?

HB: I don't understand you. I do not understand

you in my wildest

RB: We never gave you five cents.

HB: I never gave you a dime or I never did. I don't know where you ever got that idea from

G: All right, so, so what, so what do we do? What's going on?

RB: What do we do? Do nothing.

HB: What's going on? You tell your attorney.

G: Yeah.

HB: That you tell him you got confused in what he were saying. Did you write out anything for him?

G: What, are you crazy?

HB: No.

RB: Did he write anything?

G: No. No. He just

HB: You tell him

G: He sat at his desk, I was across the desk from him. We talked just like you and I are talking now.

RB: How do you know he didn't?

G: Huh?

RB: Sometimes they have recorders,

HB: He can't, he can't, don't mean a thing. You can't say anything ROSE that's perfect but you never got a dime from anyone, ED. You asked us that question

G: Now wait, let me ask you this.

HB: Wait a minute, go ahead. All right.

RB: But before we left, yeah

HB: Wait a minute, let him have ask, what

G: All right, so what's, what, what's going to be with this thing

HB: All right, let me tell you what's happened so far.

G: All right.

HB: Let me get you up to date. Let me talk here.

RB: They're fishing. In fact, I, you know what? HC doesn't want me to talk over the phone, but, uh

HB: The wires all, wire tapped.

RB: Yeah, the wires all tapped, but

G: Well, this is the first thing my lawyer told me. He says, you better assume that

your phone is bugged right off the bat.

HB: Yeah. Now.

G: Yeah

HB: All right, you say what's happening

G: Yeah

HB: You know we, we've got RIFKIND, we've got attorneys

G: Yeah,

HB: Well, as soon as they get a subpoena, we got the attorneys. You, we can't get an attorney for you because you were never in our employ. See, we can't get physically in on things. Put it that way.

G: All right.

HB: This guy that you got, your, he's not your criminal lawyer. He had no right to get into these questions within. He's not handling you first criminally and you tell him that under no circumstances because if he's going to be co-counsel with a criminal lawyer that you don't know a hole from the wall. Foreget it! Forget it! You, so you tell your attorney, look, I'm going to recommend you a lawyer. Okay, but I told you

RB: He don't need any lawyer now.

HB: Let me finish. When

G: Yeah.

HB: When, when the, when the time comes I get a subpoena, I will let you know and then at that time you will get an attorney.

G: All right.

RB: That's right.

HB: See. Now, not before now, just like a ROY SCHILLER or a PAT BUCKLEY or anyone else.

G: Yeah

RB: Or a FRANK FEY.

HB: They didn't get their attorney until they were subpoenaed.

RB: They got a subpoena.

G: They were subpoenaed?

HB: They were subpoenaed.

RB: Yeah

G: When was this?

RB: They were subpoenaed before the Grand Jury.

HB: FRANK FEY went up there. We got him an attorney.

G: When you were there?

HB: No, we got an attorney in before Christmas we got for 'em.

RB: We got an attorney for him, we got an attorney for ROY SCHILLER.

HB: For PAT, PAT BUCKLEY.

RB: And PAT BUCKLEY, the one attorney

HB: And they all took the fifth amendment.

RB: And they all took the fifth.

G: Yeah.

HB: And FLORENCE BEHAR she took the fifth also.

G: Yeah.

HB: You got to take the fifth amendment. We're all up at Judge RIFKIND'S yesterday because we wanted him.

G: All right, now look. You guys are civilians and I'm, uh, I'm an employee of the Government right?

HB: Right.

RB: You're an employee of the government. You never got five cents from anybody.

G: But

RB: You do, you sink

G: But

HB: What but? What but?

RB: What but?

G: They have different rules for me than they do for you.

HB: What rules?

G: Don't they?

HB: What rules?

RB: What is, what is your rule?

G: Huh?

HB: What rules?

RB: No. What is your rule?

G: Well actually as a civilian, uh, as far as you people are concerned, they have to have proof and all this nonsense but as far as I'm concerned, is, isn't an accusation just enough?

HB: No, no sir.

RB: No, no

HB: What do you mean an accusation is enough?

RB: I can accuse you of killing a man

G: I mean testimony, you know.

RB: No.

G: Somebody says I

RB: No.

HB: Gave you? Who, KAPRAKI?

RB: Whose testimony?

G: Yeah

HB: KAPRAKI? Who is a dead beat.

G: You, any, anybody

HB: For we, we never gave you a penny

G: All right, anybody, whoever.

HB: We, no one ever gave you any money.

RB: I never gave you any money.

G: All right.

HB: No one ever gave you money.

RB: I never gave you money.

HB: Anyone who gave you money is, is said they're crazy. The only one that could have said it would be KAPRAKI, and she's a goddamn liar.

RB: She's a big liar. You never took five cents from her.

G: In other words, this is the way we, we, would stick, stick to our

RB: I told you that the last time

HB: This is the only way. I don't know where you got your...

G: All right.

HB: ED, your, your, uh, uh, uh, methodical guy brilliant.

RB: Brilliant guy, but I, I don't understand you

G: Yeah. Well I'll tell you.

HB: Strong as an ox, strong as I am.

RB: ED.

G: Uh, this, this week, frankly this week I've been upside down, completely mixed up.

RB: Well HC said to me, I don't want, I haven't seen HC.

HB: Was there anyone else that was, uh, the FBI went to?

RB: There was somebody else. There was one other, wasn't there?

G: I don't know, I don't know.

HB: All right

RB: There somebody else.

HB: You speak to your attorney in person. You call him before it gets any further.

RB: You know what, yeah.

HB: Not on the phone.

RB: You know what HC did?

HB: Does he live out there?

G: Yeah, sure. Right in the village.

RB: Did, why don't, did you tell HC?

G: Huh?

RB: Did you tell HC?

G: I told HC these guys came to see me.

HB: Right.

RB: Yeah

G: But that's it.

HB: All right, now let me tell you something, all right?

RB: You better do something. I'll tell you what you better do.

HB: You don't get any criminal lawyer and tell your attorney.

RB: You better confide in HC, but not in his office. you better go someplace, in a luncheonette with him, because

HB: And tell him you never got money. What the hell is the accusation

RB: Yeah, because he'll, he'll tell you what, he'll tell you better than anybody. He'll he said to me they're crazy. They're fishing. I hope he knows enough to keep his mouth shut. They're fishing.

HB: You, they can't do anything to you. All you do is take the fifth amendment and, uh, that's your privilege.

RB: you, they're accusing you of something?

HB: They, they're say if you, if you don't talk you will be fired. You say you have every right to take the fifth.

G: Who aren't they accusing.

HB: Who, they're accusing us too. They're accusing everyone.

RB: They're accusing

HB: You know, wait a minute. You know, wait a minute. You know what an allegation, you know what, uh, a subpoena and even an indictment would to come down from the Grand Jury. You know what that is?

G: No

RB: It's a charge.

HB: It's an allegation.

RB: That's all. It's a charge.

HB: That they say that you're guilty.

RB: That doesn't say you're (inaudible).

HB: Then you go to trial.

RB: Yeah.

HB: And it will never go to trial because it will be knocked out and plus the fact that it could drag for five years.

RB: I don't understand you, ED.

HB: I don't, I don't understand you. I

RB: How you could confide in anybody.

G: Well, you got to confide in somebody.

RB: No, nobody.

HB: Confide what. Did you get, did, show me your receipts.

G: Hm - Hmph.

HB: Show me your receipt. Show me your tax item.

G: Yeah.

HB: Show me your cash, your check deposit.

G: I see your point. I see your point.

HB: You got a bank deposit.

G: No.

HB: Public? So how could you have gotten it? Where did you get it? Where did you deposit the money?

RB: He put a noose right around his neck. Right around his neck.

HB: I'm amazed at you. You say, I got to tell my attorney.

RB: I'm surprised at you. I told you not to do anything. Didn't I?

HB: First of all, we never gave you anything.

RB: Until I got back to you. But the last thing I said to you, I, we never, gave you

A 27

five, you never got anything.

HB: What did your attorney say? Tell me everything. Give me a clean breast. Oh, does he need all this crap.

RB: Tell me everything. Give me a clean breast.

G: He wants to know details. He wants to know dates and places.

HB: What details?

G: Times. All this sort of thing.

RB: Do you know what he would do?

G: What?

RB: What's the matter with you?

HB: What is he, what is he trying the case for you? What is he doing, trying the case?

RB: Oh, my God. Did you tell him that HARRY and I gave you money?

G: I told him everything. Because,

RB: What everything?

G: This is, ah, this is what he is here for, you know.

RB: Oh, God Almighty. Your, uh, uh

G: Because, uh

HB: Because what? Because what?

RB: Because what? Oh, God.

G: He represents me.

HB: He represents you and you going to court and say that you took money, my client took money.

RB: Do you know?

G: He wouldn't do that.

RB: Do you know?

HB: Then what then does he,

RB: Wait a minute

HB: Then what do you need him for EDDIE?

RB: Do you know, you know that RIFKIND'S got a team that's working on everything for us to do the research.

HB: And he asked us to did we ever give.

RB: They told us. Will you let me talk or do you want to talk?

HB: Go ahead, talk.

RB: They called us in one day, we went in to the city and they sat down with us and they said, you know, uh, this, this ACCETTA, the Assistant U.S. Attorney said if he don't get you on KAPRAKI, he's going to get you on charges that you paid off people in the FHA.

So they, they said, now you tell us, did you pay anybody off in the FHA? We're your attorney, so you better take come clean and tell us. I said, there's nothing to come clean about because I never gave anybody in the FHA five cents.

G: This is the people that your, uh, are working for your lawyer.

RB: Yeah, yeah, yeah.

HB: They're our attorneys.

RB: Yeah. Who the hell, you don't tell anybody ED. No one. I'm surprised at you.

HB: You better go to your attorney.

G: Yeah.

HB: And you tell him you got confused.

RB: Don't you tell him that you saw us.

HB: And you, you, you

G: Well I'll tell you, uh,

RB: Did you tell him that you saw us?

G: When?

RB: That you had a meeting with us?

G: No, no. Uh,

RB: Oh

G: What I want to ask you is this. How far is this thing going in my place?

RB: Who knows how far it's going in your place. I understand, somebody says that, uh, uh, who knows? Maybe they spoke to HC too. HC, though, is smart.

G: Yeah.

RB: He doesn't fall apart. He doesn't cop out like you.

G: You think, you think, CARROLL knows what's going on?

RB: DON CARROLL told me that they're, they're investigating in the, in the shop

HB: They, they

RB: He says but what the hell. What do they want to get? They guys didn't do anything.

G: You think that, well, like you say can confide in HC

HB: Yeah, well

G: Uh, how well do we know CARROLL? I don't know the man. I, I don't, don't know him.

HB: First of all, there's nothing going on there's, there's no one up there now.

G: Huh?

HB: It was only when CONDON was there. That they were there.

RB: Sure, CONDON left, the bastard, the son of bitch, he ought to croak. But all right, he left, but there is no one. But I don't understand you ED.

HB: What is there ED, let me tell you something. (INaudible)

RB: Don't you, you're not the only one they went to.

HB: What are you nervous about? What are you nervous about?

RB: What. Is there something else?

HB: We were nervous at one time comes. Now, I never gave you any money. That's for sure. ROSE never gave you any money. That's for sure.

G: All right, that's the story, then. I got the set up.

HB: Now if you got money,

G: Yeah

HB: Then you should have reported it in income tax. Did you? Huh?

G: I see the point. Yeah.

HB: You never got money. You, you come clean with your attorney and tell him you never received any money from anyone.

G: Well, he says he wants to know details and everything, uh,

HB: They're no details;

G: I don't know whether or not he has been talking to anybody yet at all.

RB: Why, he's going to talk to someone?

HB: And he's going to tell them that you got money?

RB: Oh, my God Almighty.

G: Well no, I don't know if he's going to tell them, but he's going to talk to me.

RB: Oh, God Almighty.

G: But, uh, he, he says that sometimes,

HB: Did he hire any...

G: Huh?

HB: What? Sometimes what?

G: He says that he has to have the thing investigated. To find out what's going on with the thing. He says sometimes you're better off in these things to cooperate with them, uh, I don't know what the hell to make of them.

HB: What do you mean cooperate?

G: Huh?

HB: What do you mean by cooperate?

G: I don't know. This is why I'm talking to you people.

RB: I'm surprised at you. I really am. I'm so surprised at you. That you would ever go to anybody. And that we, what the hell is this?

HB: Yeah.

Unidentified Male Voice: Show me where Saint Paul's Road is?

HB: I think it's around the corner the other way, though. You better ask someone else.

G: Smart cab driver, doesn't know where he's going.

RB: Uh. I'm surprised at you that you would ever go to anybody or a lawyer and go and confide yourself.

G: ROSE, who the hell do you go to? Who do you go to?

RB: You, what kind of a lawyer is that, that he told you that you would be smart to cooperate when you did get money with the government. That you took money. Then and that you didn't report it and that you had the money. They, he he's

gonna tell you that, that

HB: What, what he going to tell you that

RB: Going to tell you cloak of immunity about you. No you're not. After that, then they'll get rid of you and they'll put you away.

HB: You never took, so how can they find it.

RB: You never took any.

HB: It's going to take five or six years and all that they'll throw the thing out and you going to call and, an

RB: Oh my God Almighty. I don't understand you.

G: So what happens while these things take five or six years?

HB: Nothing. You keep on working, that's all.

RB: So what? So you keep on working. You forget about it.

G: You think so?

HB: In other words, what your attorney is trying to tell you, you turn state evidence. That's what you trying to say.

G: I don't know. I don't know, HARRY.

HB: And do you know where you end up? In other

words he says cop a plea. Take five years instead of ten years. That's what he's trying to tell you the dumb

G: How far does, does, does it make any difference how far your feet are off the ground when your hanging? It's rediculous.

RB: Oh, my (inaudible)

HB: Well you're going to I haven't got a headache because, because I never gave to you.

RB: Oh, you know why, I tell you. I know, but you know why I got a headache to think that ED would be that dumb.

G: Well, its.

RB: To speak to a lawyer and, and tell him a thing like that. To come clean.

G: Well, whatever you say to him it's, it's between you and the lawyer, anyhow.

RB: No, no. Do you know what you tell him?

G: Isn't that right?

RB: You know what you tell him?

HB: You tell him not to hire any attorney tonight.

RB: I would go back to him and I would tell him, not tonight.

G: I can't see him until Friday.

RB: Nah, when you see him.

HB: Why?

G: Huh?

HB: Why?

RB: Tell him.

HB: Wait a minute. Why?

G: Because he's going to be out in court out in Riverhead.

HB: Well, where, where does he live?

G: In Babylon.

HB: Call him up at his house. You want to see him.

RB: Do you know what I would tell him?

G: I hate to bother him.

HB: What?

RB: Do you know what I would tell him?

G: Oh, yeah.

RB: You know what I would tell him?

HB: Tell him you want to speak to him for a few minutes.

RB: You know what I would tell him when I see him.

G: What?

RB: You know I want to tell you something. Don't say you saw us. Now you listen to me.

HB: Say you understand everything just (inaudible)

RB: Now wait a minute.

G: Yeah

RB: Now you listen to me. What I tell you to say and you say what I tell you.

G: All right

RB: You know I'm going to tell you something. My conscious is bothering me. I never got anything from those people. But I

HB: I never got anything from anyone.

RB: I never, I, I tell you the truth. I have such a hatred and dislike for them

G: Oi Vay.

RB: What?

G: Oi Vay.

RB: What? Listen to me. I have such a hatred and dislike for them.

HB: I don't care for them.

RB: I don't care for them but I'd like to destroy them.

HB: (Inaudible)

RB: But them I realize, no, listen to me HARRY. But I realize I shouldn't, uh, I, I, I won't have any luck if I do a thing like that. They never gave me money.

HB: They never got it from anyone, anything.

RB: I never got anything from them. I never got.

HB: From anyone. ED.

G: So he

RB: If he took from anybody else (inaudible)

HB: What?

G: So he says why did you tell me this the first time.

HB: Because he

G: What do you tell him.

HB: I want to

RB: Because I wanted to put the whole blame on them. That's why. I wanted to put the blame on them. I'm telling you.

HB: (Inaudible) you know, you know, can't concentrate and your say I don't know, I'm just talking that way but look, first of all, he's not going to be your attorney.

G: No

HB: Right? And

G: Well I don't know from what you tell me, he seems to be a simple creature. You know what I mean?

HB: He can't be your attorney. He's not a criminal man is he?

G: He sure don't sound like from what you tell me.

HB: All right, you tell him, before he speaks to any criminal lawyer or anything, uh,

G: What you got another idiot looking for directions? No. Another lost cab driver. What should I tell him now?

HB: Tell him that, look,

G: You got to bear in mind now that he's a friend.

HB: All right, then look I want to level with you.

RB: (Inaudible)

HB: I didn't give anything your friend of mind. Forget this whole conversation. There's nothing to this whole thing. See?

G: Yeah.

HB: Then if you got a subpoena. Say you got a subpoena to, just to come down on a KAPRAKI. It was on a KAPRAKI matter.

G: Yeah

RB: That's all.

HB: That's all. And they want to see on the values of a KAPRAKI matter. That's all it amounts to. That's all. And when you get the subpoena then you'll speak to him again, the attorney. At that time, tell him nothing and bother with an attorney.

RB: Don't speak to him. Don't speak to him.

HB: No, you, go, say you'll speak to him at that time about an attorney.

G: Yeah.

HB: At that time, I'll steer you clear to a good criminal lawyer which we will pick up.

RB: Yeah, yeah, yeah.

G: You got someone who knows what they're doing?

HB: Certainly I got someone that knows, what the hell I'm going to give you a Suffolk man. So tell him the whole thing has been dropped.

A 41

RB: That's right.

G: Okay.

RB: That's right.

HB: Ed, ED

G: Yeah.

HB: See him tonight.

G: What today.

RB: Yeah.

G: Today is what, Tuesday.

HB: I'd see him tonight before he goes looking for any attorney. Say I got a good case, I want to forward (inaudible)

RB: Ok, Now, listen, yeah. Tell him to forget about the whole thing.

HB: Say, uh, nothing has happened.

RB: Nothing to it.

HB: All right?

RB: Nothing to it. Nothing to it.

G: I wish I could be as calm about it as you people.

RB: Well, uh, listen because they're fishing and they're trying

HB: Listen, the indictments may come down but you wouldn't be involved in the goddam

thing anyway.

RB: ED

G: Huh?

RB: ED, you wouldn't be involved if you keep your mouth shut and your head cool. Nothing is going to happen to you. But you're going to be like this, you're going, your, there, there, uh, something will happen.

G: Ah shit.

RB: I don't know. Why do you even say these things.

HB: Forget it, he didn't tell him.

G: Are they bothering other people in my place, too?

HB: They're, well, whoever they bother they bother.

RB: So what do you care, they don't care. How many times you think they go in to HC

HB: Call me up tonight.

RB: And ask him. But he's as cool, cool as cucumber.

HB: On your way home, stop off and see him. Is that on your way home?

G: He wouldn't be in yet.

HB: Why?

G: Huh?

HB: Why?

G: Well let's see, Riverhead at six o'clock. Yeah. He might be home by then.

RB: You know why? He's liable to start to make investigations.

HB: I don't know why.

G: Take almost an hour. Huh?

RB: He's liable to start to make an investigation tomorrow.

HB: Tell him not to bother. Nothing is (inaudible)

G: So what harm if he starts an investigation?

HB: You don't want.

RB: We don't want anything, ED!

HB: I want to ask you a question. What do you mean what harm?

RB: I don't understand you.

HB: ED, if you're so methodical, what do you mean by what harm?

RB: Oh, God.

G: Yeah.

HB: What do you mean by what harm? To start what should he do? Uh, what should he do

A 44

in an investigation?

RB: What kind of investigation do you want him to do? What, what do you want him to do?

G: I don't know what he is talking about.

RB: Well, you, you don't know what he is talking about:

HB: Is that what he wants? What does he want to do? Go down to the Federal DA and ask them what's on there for my client when he wouldn't even thinking client wouldn't even, when, when, may, may not even think of calling you or anything. And now all of a sudden they got your name. Huh?

RB: Now you tell me exactly what did the FBI say to you? Exactly. When they came in.

G: They came to the house.

RB: Yeah.

G: All right. Now they come to the house, and for about a half hour they just, you know, talk in circles. And then, they said that, uh, let me think now. Well first they come out with a paper, and they advise you of your rights, and they want you to sign the paper. You know, I don't sign anything

unless my attorney is present and I said, all right. They read it to you anyhow, you know they read it to you. And after they read it to me, uh, they state that I'm the subject of an investigation, and a possible defendant. Let's see. In the complaint I don't know whether they said with or to the United States Government. And, uh, oh, you know at this point, I become very wary, and they said that it involves my work with the FHA, and they mentioned KAPRAKI. So I said thank you very much. I've got nothing further to say, and uh, that if I had anything to say I'd speak to my attorney first. And they left their two phone numbers. They said that I should think about it. If I should make a clean breast of everything, and, uh, think about it, and left me two phone numbers to call.

RB: Then they never mentjoned me or HARRY?

G: Huh?

RB: They never mentioned HARRY or me?

A 46

G: Oh, they mentioned Eastern, they mentioned a couple of different uh, mortgage corporations.

HB: Who did they mention?

RB: Well, whoever, what did they mention?

G: Well, they mentioned, uh, Eastern Service. Uh. Let me think now, yeah, United, Inter-Island.

RB: Springfield?

G: I don't remember. To be honest with you, I don't remember.

RB: Did they mention my name or HARRY'S name?

G: They said the BERNSTEINS. They said they're aware of relationships, uh, between the FHA and the BERNSTEINS and Eastern Service Corporation.

RB: See, they're fishing.

G: And, uh, they had another word besides relationships I can't remember.

RB: So what did you say?

G: I didn't. I listened.

RB: You listened and didn't say a word.

G: I listened.

A 47

RB: Did, did, they ask if you ever took any money?

G: No, no.

RB: They didn't ask you then?

G: At this point, no. They didn't say anything like that.

RB: So they didn't say anything. It was a fishing expedition, and I'm surprised at you that you mentioned anything to your lawyer.

HB: Well you better tell your lawyer.

RB: You better bad, back track that so Goddam fast. Nothing is going to happen to you ED.

HB: (Inaudible) nothing is happening and just forget it. Nobody is going to get it.

RB: If you keep your mouth shut nothing will happen.

HB: Did you tell your lawyer that you're going to get a criminal lawyer and we were going to pick up the tab.

G: No

HB: Good.

G: No.

A 48

HB: All right forget that.

G: As far as he is concerned, he is the only one I have spoken to and he is the only one I have spoken to.

HB: All right. All right, then you tell him that you didn't receive any money at all. I don't know I was just confused.

RB: Oh, can you imagine.

HB: And don't let him say, ah, come on I'm your attorney, tell me.

RB: Oh, no.

HB: Forget it. First of all, we never gave it to you anyway

G: All right, so much for him. But suppose something does come up and we get this, uh, sub

HB: Subpoena?

G: Sub, subpoena, yeah.

HB: Subpoena?

G: Subpoena, yeah

RB: If you get a subpoena

G: And all right, we get a good attorney on the thing and knows what he's doing. How about him?

RB: You don't tell anybody. I don t care who your attorney is.

HB: About what? Money? You never got money. You never

RB: You never got any money.

HB: ED, did you ever get money?

G: In other words, you just, all right, I get, all right.

HB: You never got money.

G: I get the picture, I get the story.

RB: Oh, my

HB: You never got money.

G: Okay.

RB: You never got anything.

G: All right.

HB: We never gave you anything.

G: Okay.

HB: You can say we gave you, but we never gave it to you. You look stupid that we gave it to you.

RB: Right. He'll sink. I'll tell you, he'll he'll, he'll, he'll, he'll

G: Who, the lawyer? Me?

RB: You, you, you go, you go for five years at least.

HB: You go, first of all, no one is going anywhere. I want you to know that.

RB: That's right.

HB: But when you say you got money you're admitting to a guilt

RB: You, your, you're admitting to a guilt.

G: Hmm.

HB: They'll say we'll give you this off, that off.

RB: We never, uh

HB: We gave you, we never gave you money.

RB You know what they do. They imprison you, when you take money

HB: They ask, wait a minute, now wait a minute. Money?

RB: And they don't pay income tax.

HB: What the hell do you, you're a fluke. Forget this, then they'll ask where is the income tax from this.

RB: That's right. That's what they'll say.

HB: The Government. They give you immunity on this but immediately the income tax people.

G: Un-huh.

HB: Why, why didn't you report it?

RB: That's right.

G: Un-huh.

RB: (Inaudible)

HB: They give you immunity on this. But immediately you they got you with the income tax.

RB: You never got five cents. You never got anything from anybody.

G: All right, I get the story.

RB: Did you hear me?

G: Yeah, okay

HB: Uh, Uh, if they did hear

G: Anybody.

RB: Did you hear me?

HB: Anybody.

RB: That goes for anybody. Nobody gave you anything.

HB: Now you go back to your lawyer and you said and you tell him, look, there is no more, there, I understand the whole damm thing was a general, uh, uh, and it's been dropped. And don't go looking and mention. Don't look. What the hell you say he's going to make an investigation.

G: I'll tell him forget it. Tell him forget about it.

RB: Is he a very very good friend of yours?

G: Yeah.

RB: A very, very good friend?

HB: How long do you know him?

G: Oh, fifteen years.

HB: All right then, now you, is he going to make, is he, you say he's going to make an investigation meaning he would go and make inquiries. When have they got, uh, uh, uh, on ED GOODWIN. Right?

G: Yeah.

HB: All of a sudden your name pops up where they never even bothered you.

RB: Ah. I don't believe it.

HB: What the hell is he going to make an investigation about?

RB: A PAT BUCKLEY is smarter. I'll take any two of (inaudible) I'm amazed at you.

HB: I'm, I'm, you know, if PAT BUCKLEY did something like that

RB: If PAT BUCKLEY, PAT BUCKLEY is smarter.

HB: This I could, I would never believe that of you.

RB: A FLORENCE BEHAR is smarter. She never got five cents from anybody, she said.

HB: I would never believe that of you. She never got a nickle from anybody.

RB: She never got a nickle from anybody.

G: Well, she's in your office, that's a different story.

HB: Wait a minute, we're talking KAPRAKI.

G: Huh?

RB: KAPRAKI.

HB: KAPRAKI.

RB: What do you mean, she's in an office, it's a different story?

HB: KAPRAKI, you're talking about.

RB: You are, wait a minute.

HB: KAPRAKI would said, she gave to you, to FLORENCE BEHAR.

RB: Yeah.

HB: To PAT BUCKLEY. They never got.

RB: They never got anything.

G: What difference does that make?

HB: If everyone said no, then KAPRAKI is lying.

G: Yeah.

A 54

HB: First

RB: FLORENCE BEHAR said no.

HB: PAT BUCKLEY never got a dime. She said that. Even the attorney she's got they asked her did you ever get money. Tell us. Of course not. And the answer is of course not. And I tell you, go back, call, go to your attorney now and call us up later.

RB: If you going to call us you change your

HB: Call us from the outside, call from your house and don't talk to much and just say that

RB: (Inaudible)

G: No, no, I'll call from home, no.

HB: That your, your, your, your your

G: I took care of it.

HB: Your, your you don't even have to say, uh, one, uh, I still may have a little leak but I found, you found out that there, there is no leak. That's all.

G: All right.

HB: The whole thing, I, uh, I told them if you put a little cement there, uh, would relieve the pressure.

RB: No, just say, just say if you dig another trench it's going to relieve the pressure. Then we'll know that you did all right.

G: Okay, that I saw the attorney and it's worked out.

RB: Yeah, yeah.

G: Okay.

RB: Yeah.

HB: But make it your business then. PAT BUCK

G: How late, when will, when will you be home?

RB: Oh, we'll be home

HB: Oh, we'll be home by nine o'clock.

RB: We'll be home nine o'clock. Call me any time.

HB: I want to ask you a question.

RB: You better, you

G: I want to get outside here.

HB: Where does your attorney, uh, live from your house?

RB: Don't call, don't call from your house.

HB: Where does your attorney live from your house?

G: Uh, half a mile, mile.

HB: So then go find you a place and then if he's not home go back and call him up

G: Yeah.

HB: And tell him you want to see him.

G: Yeah, well I'll leave word with his wife.

RB: Oh.

HB: And you, just there's nothing, "oh" you see, don't let your attorney say that you're going to cooperate or anything that's for the birds.

RB: Oh. Oh.

HB: Because, it's my word

G: He wouldn't, he wouldn't do anything like that.

HB: It's my word against

RB: Oh

HB: First of all we never gave you anything.

RB: I'm surprised at you.

HB: Secondly, secondly, ED, say, uh, the attorney said, as, you're getting immunity, this and that and the other thing. You know what happens?

G: Hmm.

HB: Get this. Got immunity on this, that and the other, which we never gave you anything, all of a sudden you declare something that you never got and where, why didn't you

pay the income tax on it? Why didn't you pay the income tax on it?

G: I see, you people

HB: Huh?

G: You people know the angles, I don't.

HB: Why didn't you pay the income tax?

RB: But, but, but I told you not to say anything to anybody.

HB: Didn't we tell you not to say

G: Yeah, but a, but a lawyer, that's

RB: No, that's no lawyer.

HB: That's not lawyer, what do we got, spell it out?

G: All right, all right.

HB: Go back and tell the attorney and tell him the whole thing is dropped.

G: Right.

HB: And, uh, there was just a general investigation and

G: Yeah, right.

HB: They're all satisfied.

G: Okay.

HB: That's all, don't, uh, forget it.

RB: ED, the whole thing (inaudible)

HB: If anything materializes I'll let you know.

G: I'll let you know.

RB: Yeah (inaudible)

HB: If I get a subpoena, if I got any more questions, I'll call you.

G: Uh-huh.

RB: (Inaudible)

HB: Don't let them say I want to prepare it before you get the subpoena because you may not get a subpoena or anything. And if they ever want you to come down to, here's another thing, if they ever want you to come down, to talk

RB: If he should ask you, if you do it with the

HB: Wait a minute.

RB: BERNSTEINS with the money, say listen, I shouldn't, I, I, I, I don't like those people and I've been trying to

HB: Oh, forget that

RB: If he should say, HARRY, that's the best thing to say.

HB: Now say that look, I, I, I just saw them, uh, and, uh, that's all, maybe I shouldn't be that way that's all.

RB: (Inaudible) that's all.

HB: I realize I shouldn't talk and lie about anyone.

RB: I shouldn't lie about them

HB: That's all, you lied before. Forget it.

RB: You lied, I was lying. I really was lying.

HB: And uh, I was lying before. That's all.

RB: That's all, I was lying. Tell him you were lying.

HB: And tell him not to make any investigations

RB: You tell him you were a liar.

HB: And if, incidentally if ACCETTA or anyone calls you up to come down, inform me and call me.

G: Why would he call me?

HB: All right, I'll come down with my attorney. What?

G: Why would he call me? Oh, yeah.

HB: I'm just, I'm just, now I gotta brief you on every, I, uh, Wednesday comes Thursday and Friday.

G: Yeah, yeah, all right.

RB: If anybody calls you at all, get in touch with us right away.

HB: So, I'll come down and say I'll get my

attorney and then come. Then they won't call you. All right, when can I come down with my attorney. You want me down, all right as soon as I get my attorney I'll be glad to come down, because you don't have to go down at their beck and call because they didn't subpoena you

RB: Just call us.

HB: Then if they subpoena you, then you just go down and take the fifth amendment. Then we'll get you an attorney. Forget your friend. I can see right away

RB: (Inaudible) I think you ought to give him that other number you got for the house.

HB: Huh?

RB: You ought to give him the other number, no? No

HB: 636-5254

RB: 5254, you got that number?

HB: He's got that.

G: It's in the phone book anyhow right?

HB: Yeah.

RB: It's not 52 is that? Yeah, 5254 (inaudible) All right.

G: Okay.

RB: But, uh, this is what you should do.

G: All right, I'll take care of it tonight.

RB: Don't you dare, you better back track, you better do that, ok.

HB: And furthermore,

G: I'm glad I talked to you.

HB: If you get a subpoena

G: Yeah

HB: Dont' say anything to anyone. We'll get you an attorney. We'll get you an attorney.

RB: You take these little, you take these little, uh, you take these little lawyers sometimes they look for something so that they should make some extra money for themselves, too.

G: Garden City Police.

RB: What's the matter with you? ED, I don't understand you I really don't.

G: Hey you better move. This cop is

RB: I begged you.

G: This guy is looking at you funny.

RB: I begged you. I begged you and begged you. Now.

HB: He lives there. See?

G: Oh, oh.

RB: No, he's backing up.

G: Now, take it easy don't go fast. He's liable to think that you've robbed a house or something.

RB: Where is, where is your, your car?

HB: Right back.

G: Around the corner. Where, where am I at?

HB: Right here. We just passed it.

G: I'm, oh, I'm sorry I thought, we were, I thought we were on another block.

RB: (Inaudible) I want to tell you've better, You've better

G: All right. I'll see him tonight.

RB: You better change your, change your and no one but no one

G: Un-huh

RB: And no matter how the FBI they come back or anything and try to harass you, the answer is no.

HB: And they say we got the answers.

RB: The answer is no.

HB: You got so they'll say we got affidavits. You got money.

RB: They've got no affidavits.

HB: Then you don't need me. Then if you got an affidavit.

RB: If you got affidavits, you don't need me.

HB: If the other people lied.

RB: Yeah.

HB: It's not my fault. You better speak to my attorney.

RB: No.

G: You don't need to go back that way HARRY. You can drop me off.

HB: Yeah, all right, you can walk alone here.

RB: (Inaudible) ED.

G: Better to let me walk. Better back in though. Don't leave your ass out.

RB: ED, do you hear me? ED, what I tell you. Do you hear me what I tell you? What?

HB: He knows, he knows.

RB: No one but no one.

HB: ED, not even your attorney should know these things.

RB: Nobody should know that, but nobody.

HB: It's privileged. When he says you better cooperate with them and they cooperate,

RB: Oh,

HB: There is no such thing, as, you are cooperating. You never got a dime. You are cooperating. What's your problem. You're cooperating.

RB: You never got anything from anybody, do you hear me?

G: Yeah.

RB: That is your answer, over and over and over again.

HB: If someone produced a check,

G: Huh?

HB: If someone produced a check, let them.

RB: Let, nobody can produce a check.

G: Of course not.

RB: Nobody.

HB: All right, so

RB: So there.

HB: Your, your attorney says to cooperate. So then, they'll get you on, on taxes. And then you'll, you'll pay for taxes that you never even received money on,

RB: And he'll tell you that he's going to get you off and all that. Don't listen to me,

Listen to me. There are plenty of lawyers. I know a lawyer that did something to a guy. He promised him this, that and the other thing. The guy has got Parkinson's and, and, and he went. Don't you even with a lawyer you can't.

HB: Call your friend up and say look

RB: You got lawyers that can suck the blood out of you.

HB: You're not going to a doctor that's been sick.

G: Better than call him. Better than call him, I'll go see him.

HB: See him, see him.

G: (Inaudible) see him. Yeah.

RB: You've got to go and see him.

HB: See him tonight and tell him the whole thing is off. Don't let him make any

RB: Naw.

HB: What did he say he was going to make some investigation?

G: He said he was have to, uh, do some investigating and find out what was going on.

HB: Don't let him find out a goddamn thing.

RB: Oh, he's gonna stir up a hornet's nest.

HB: You know what he is going to do? Now it has been dragging for six months, three months, they keep asking questions.

RB: They keep, they keep going, they

HB: All of a sudden he's gonna.

RB: They, he's gonna fix it up. He's gonna, he's gonna put everybody behind the eight ball. What's the matter with you?

G: Look, this is why I ask you why I come here.

RB: Oh, oh, but I, but I told you the last time, ED. Keep your mouth shut. You got nothing.

HB: You say he's your attorney. He's your attorney. But he nev, you still haven't gotten anything.

RB: We don't confide in anybody. You never (Inaudible)

G: Uh-huh.

HB: He's your attorney. All of a sudden if you got say some, say someone gave you a thousand dollars. He'll want $500 of it all of a sudden.

G: Oh, maybe this is why he's asking.

HB: Well, what do you think?

G: Yeah.

HB: He wants a piece of the loot which you didn't get, for christsakes.

RB: Oh

HB: Let's go home.

RB: Tell him now you saw, you saw an attorney and he said (inaudible)

HB: Look, I didn't take anything which you didn't take, ED.

RB: I'll tell you this, I shouldn't, I had no right to do this. I don't know, I know it's a lie.

HB: First of all

RB: I didn't take anything.

HB: I didn't take anything.

G: Yeah.

RB: And, and (inaudible)

HB: And you understand the whole thing is dropped anyway.

RB: Yeah.

HB: Then if anything materialzes.

RB: No I never took anything (inaudible)

HB: Don't let him start raising a hornet's nest that he can get a fee.

RB: Just forget about it.

HB: You see he may be waiting for a fee now. But don't say anything, to him about it.

G: I mean, he hasn't even talked about that.

RB: Naw.

HB: Don't tell him about it.

RB: How long did you sit with him.

G: Oh, what, five minutes, ten minutes, tops.

HB: All right, go and tell him about it.

RB: I hope he didn't have a recording machine there.

HB: No.

G: No, he's not like that. He's not, he's not like that.

HB: (Inaudible)

RB: No, but some attorneys can get like that

HB: It's all privy.

RB: Yeah, well. All right.

HB: But don't let him get to the criminal lawyers.

RB: Yeah.

G: No?

RB: No, don't do that

HB: When it comes to a criminal lawyer, we'll get you, you a good one (inaudible)

RB: And don't let him talk you into anything.

HB: Because you know how we can justify that? You know how?

G: How?

HB: When it comes to a criminal attorney.

RB: All right, I want to tell you something.

HB: Wait a minute. You have a problem. You know someone, and, uh, and you knew that we were having attorneys, we have problems. You, you could have said who, and, uh, we can, I don't know

RB: What are you talking about?

HB: Now, with, with a criminal attorney you can (inaudible)

RB: Uh, you cross that bridge with (inaudible)

HB: First of all, I don't think it will come to that.

RB: Yeah, yeah, yeah. When that comes, then we'll tell you what. Then you get in touch with us. You call me tonight.

G: Yeah.

RB: And let me know.

G: Yeah.

HB: Stop getting. Now, you look, ED. It's not pleasant. We were restless the first time we were even spoken to. Believe me we're not made of iron, but at least, we, we, we got a clear head

RB: Oh, Jesus Christ

HB: Because fortunately for us we don't give anything to anyone.

RB: E. G. La. I treat you like a woman. I want, I want you to know yeah

HB: To anyone, I didn't know anything about KAPRAKI or CARDON, what, CARDON.

RB: Yeah

HB: All all we did is go before the Grand Jury and read the fifth, I refused to answer, I refused to answer, I refuse to answer. That's it. Good-by.

RB: How many times did I have FBI come up to my office, uh, to ask about different things. Uh, we understand you paid off this one and that, it's a lie. It's a lie. You say it's a lie. You hear about these things, you read about them, in the papers all the time. But if you don't admit

to anything nobody can ever say anything.

G: Uh-huh.

RB: What's the matter with you.

HB: Call up later.

G: Okay.

HB: All right. Go ahead.

G: How do you open this damn thing here?

RB: Don't ever (inaudible)

HB: Watch out ROSE. Let him out.

RB: I don't, I don't know.

G: I don't, I don't know. This ain't, this ain't the button. Is it

RB: Look at, hey ED, ED, before you go. Look what went on in the FHA a few years ago with the FBI.

G: I know.

RB: The only thing different was questions.

HB: You don't know what (inaudible)

RB: And everybody, ED, said no. And they denied it. And they, they accused every, practically everybody, in there that they were taking. You know that.

G: Yeah.

RB: And what did they all say. You, they all denied it.

HB: What happened.

RB: If you denied it, what happened to it? What happened to it?

G: Yeah.

HB: The only proof they can have is from a KAPRAKI that she said she paid this one, and gave, she'll mentioned fifty people and everyone is a goddamn liar. Everyone that will say I didn't receive it so what is KAPRAKI. The State Department says she's a thief.

RB: KAPRAKI says I worked on her deals, then, I never, never had anything to do with her.

HB: The State Department says she's a thief.

G: Hm.

RB: Come here. Wait a minute. Listen. This is going to be proved.

HB: She was convicted for something in Queens.

RB: Yeah. This

HB: Uh, prior to ever coming into our office.

RB: ED, this is going.

G: Really.

HB: Yeah.

RB: This, if this ever comes to a trial,

HB: And, I

RB: She said that I worked on her cases and I phonied them. I never had. She was never in my office. I never had anything to do with her deals.

HB: We never spoke to her, but once, hello. See?

RB: How do you like that? What do you think I'm going to get, uh, panic over it?

HB: Call your attorney and tell him to forget the whole thing.

G: I'll go see him.

HB: See him, I mean see him. Don't talk to him on the phone.

RB: You'll, you'll, you'll call us later.

HB: Call me later

G: Yeah, Yeah. Wait a second. You've got to let seat belt. Okay. Now I can go.

HB: And then (inaudible)

RB: And, and, and, and you know what you'll say. Uh, yeah. If you dig another trench it, it won't leak anymore.

RB: No

HB: No, the, the water conditions, uh, will take the pressure off and, and

RB: No, no, if you dig another trench it'll, it'll, it'll, it'll

G: Keep it, keep it simple. I'm confused enough.

RB: It'll remove the hydrostatic condition.

G: Okay.

RB: That's all.

HB: That's all. It will remove the hydrastatic condition.

RB: Hydrastatic condition.

G: It's cramped in here, my God.

HB: That's all. If anyone is listening to along the lines that we're talking at

G: Yeah

RB: It's water problems. That's right.

G: Okay, you got a handle here to open the thing. All right, all right.

HB: All right just relax (inaudible) ED

G: This car ain't meant for big people, let me tell you.

HB: Did you speak to TERRY?

G: Huh?

HB: Huh?

G: TERRY?

HB: Yeah.

G: No.

HB: About, uh, the wires and all.

G: About the what?

HB: Wires.

RB: Wires. She's out on strike.

G: Oh, that nonsense. Oh. Nothing you can do with it.

RB: Oh.

G: She's out on strike.

HB: All right

G: Okay.

RB: Okay.

G: God bless.

EDWARD J. GOODWIN, ALFRED FAYER, ROSE BERNSTEIN and HARRY BERNSTEIN on February 9, 1972, in Maison Pepi Restaurant, West Hempstead, New York:

(Tape Inaudible)

EDWARD J. GOODWIN: (Inaudible) class and (inaudible) when I get home. Okay? All right? Okay? God Bless. Miss you. Be good now. Bye bye.

HARRY BERNSTEIN: What are you drinking, Jack Daniels?

G: No, no, no, I'll get a headache (inaudible) I bumbed my knee getting into that goddamn car. Let me have, uh, Johnnie Walker Red.

(Tape Inaudible)

ALFRED FAYER: What are you drinking?

HB: Let me have, let me have Dewars on the rocks with a twist.

F: But, uh, (inaudible).

HB: Yeah (inaudible).

(Tape Inaudible)

F: (Inaudible)

G: Hmm.

F: Uh.

G: I'm going to be listening alot. I'll let you know that right now.

F: ROSE has mentioned to me this morning, uh, what you had said to her yesterday.

All I can say is this, I think you know my stature in the profession. Uh, uh I would be very, very careful uh, about volunteering any information or saying anything. I'll tell you why. Number one (inaudible). There's no question about it. (Inaudible) who has said what and who hasn't said what, and that they know everything that's going on and so forth, and the next thing you know, you commit yourself. And after you're committed, you're in. You can't back out. So far as (inaudible) on the mercy of anyone (inaudible). Let's not kid ourselves. All you have to do is look back on every, any investigation that's ever made. Go back to, uh, the building department investigation a couple of years ago.

G: You're talking about, building, FHA building or, or...

F: No, no, I'm talking about the New York City, remember.

G: Oh, that's good. I'm thirsty.

HB: How about some of that famous pumpernickel hot seasoned bread? Do you know which kind I'm talking about?

Waiter: (Inaudible)

G: (Inaudible)

HB: Toasted.

G: You don't have any?

Waiter: (Inaudible)

HB: (Inaudible). Yeah. Toasted.

ROSE BERNSTEIN: (Inaudible)

HB: (Inaudible)

G: I never realized it.

HB: Oh. (Inaudible)

HB: (Inaudible)

G: I'm sorry I didn't mean to interrupt you.

F: No, no, that's all right . But the wind up of, uh, there was that they dragged the building inspectors right in all the way, City of New York. Everyone of these things and they do it. Now. The only thing as I see it, and I tell you this, this is exactly the advise that I had given ROSE and HARRY. Say nothing. Why? When you say nothing, they have to prove the

case against you. They have to make it. If you say something, which has helped them, which has helped them in a lot of different places and a lot of different areas,

G: Yeah, but, AL, isn't this sort of like a double standard between someone who doesn't work for the government and (inaudible) for the government.

F: Double standard is very simple double standard. The only difference is that if you refuse to talk.

G: Yeah.

F: You lose your job.

G: Oh yeah, that I know.

F: Period. That's the standard.

HB: He talks he'll lose his job anyway, if he talks.

F: You're gonna lose anyway.

HB: (Inaudible)

F: The, remember, that the refusal to talk is never, never means they've not permitted to mean guilt in so far as a court is concerned. The only thing it does mean is that the

government has the right to let you go. If you talk you know you're gonna be let go anyway, and then you're opening other avenues for yourself. You're opening up, as I told them the same thing and I tell you now...

G: Hmm.

F: I'm giving you no different statement or advice now than I gave them before.

G: Hmm.

F: But, uh, the other avenues that are being opened up, no kidding about it, no question about it, Revenue Service, Uncle Sam steps in (inaudible). Why's it here, why's it there. They're in the same position. Everybody's in this position. So that, uh, all you do, and all they would be doing, and they would have done, had they, uh, said a word, is (inaudible) live with it. I, I was gonna say, there's your double standard. That's the difference, no question about it.

G: Uh, I'm con, I'm confused a little bit on some of this now, uh, I didn't get into this in detail but I understood that as far as,

uh, where the government is concerned, Federal law is different from state in that state you have to have corroboration and everything else and Federal law all you need is merely an accusation.

F: In what?

G: As far as you know, as, like a testimony against you.

F: As to what?

G: Any wrongdoing.

F: Absolutely not so. Absolutely not so and whoever told you that is completely wrong. And I tell you now, whoever said this made a very wild, wild statement.

RB: Who told you this EDDY, your attorney?

F: Let me say this, uh...

G: Like I said we didn't get into it. He started to tell me something about this. Now, let me say this, and I'm now, I tell you this professionally. In the United States of America, and I don't, I'm not, (inaudible) state, I'm talking about every one of them. I'm talking about the Federal Government. The law is absolutely clear that you must have proof. (Inaudible).

RB: Oh, what have we got here?

Waiter: (Inaudible)

G: Hmm, that's a lot easier than this (Inaudible) Venison. Would you believe it I had venison Saturday night.

F: Gee, that, that's an unusual thing to have twice in one week.

G: Yeah.

RB: What have they got, what is that charcoal what? I can't see there.

F: Which, where, where, where?

RB: Right there.

F: Sauerbraten.

G: Sauerbraten.

RB: Oh. What is that, medallion what? Medallion du Bary, medallions of beef. That's, little, uh, pieces of steak, parts of steak. And then I'll take coq au vin.

G: I'd love to taste the sauerbraten but my stomach was doing nip ups. I'll stay with something simple.

RB: I thing the best thing is to take what they've got there, huh?

G: Oh sure, yeah, anything on the big menu. In my opinion big menus mean one thing, that they have it in the freezer.

RB: Yeah.

G: Least, that's the way I feel about it.

RB: Maybe he's got a steak, regular steak, would you (inaudible) is the regular steak, AL?

F: No, not me. I thing I'm gonna have the coq au vin.

RB: That's chicken in the barn. (Inaudible)

F: Yes. Red wine.

RB: Hmm, maybe that's good.

F: I want half that roast duck.

RB: Huh?

F: (Inaudible) the roast duck. Yeah, I think I'll have the coq au vin.

G: It looks like HARRY ran into a friend, huh?

RB: Where did HARRY go?

F: Where did he go?

G: I don't know, I hear his voice out there.

RB: ED, why don't you take some of this bread.

G: Yeah, That's

RB: Here try this bread. Try this bread.

HB: (Inaudible) Don't look at this.

RB: No. Huh?

F: Why not? I don't want any.

G: Well, you know.

HB: I know.

RB: Is the steak good?

HB: The steak is good here.

RB: Yeah.

HB: Excellent here. You remember?

RB: Yeah.

HB: (Inaudible), but their steak is excellent here. What the hell is medallion, what is that?

G: I don't know.

F: Medallion beef is little round, like tomatoes.

HB: Yeah.

F: Little hearts of beef.

HB: Did he bring the, uh...

RB: Yeah.

G: Hot bread? Here you go.

HB: I don't want any. This is for you.

RB: All right.

G: Fatsville.

HB: What?

G: That's fatsville.

RB: (Inaudible)

F: No, no, no. I think I'm gonna have the...

RB: How about lobster?

F: You know I think I may even have, I think I'll have the veal scalloppini. That should be good enough.

RB: (Inaudible)

G: Let me have a little butter HARRY, huh?

HB: Hmm, here's the bread. (Inaudible)

G: Yeah I see. Okay. Good.

HB: Not me, I don't eat that. I'll eat this.

G: He's just showing off.

HB: Did he take the hot?

G: Yeah.

F: (Inaudible)

G: So what's gonna be?

F: I tell you now on a professional basis that the law in the forty, fifty states, I almost said forty eight, you know, (inaudible) I go back a little ways. At the Federal level, you must have corroboration. There is no question about it. Now the question is where does the corroboration come from. This whole thing stems from this KAPRAKI, no question about it.

And they do have KAPRAKI and CARDONA.
We know...

G: They got a what?

HB: Give me some (inaudible)

F: KAPRAKI and CARDONA. (Inaudible)

G: Who the hell is CARDONA?

F: CARDONA is, they are very dissatisfied with his testimony. There were several shall I say upsets, got it there were several disputes between the Assistant US Attorney and CARDONA. So that in my opinion, the only way anybody here is going to be hurt is if they hurt themselves. Told ROSE before she went up, because ROSE gets nervous, there's no question about it, because everyone does.

G: Everybody does.

F: Everybody does.

G: I'm nervous too.

F: So ROSE, which is understandable. In my, uh, I'm at home in the courtroom but you people are not.

G: Yeah.

F: I told ROSE before she goes in there she's gonna have to make up her mind, to sit tight, no matter what they say.
Keep quiet.

Anything she says, I'll tell you now, can be used against her. Now you know that, that they call the, present day...

HB: (Inaudible)

F: They call the present day, they call it the Miranda warning. They always let you know that anything you say can be used against you. That's what they use it for. If anything, if anybody says there, it's gonna hurt them. This is basically my feeling. This is why when they, ROSE mentioned this this morning, I said, invite GOODWIN to sit down, because everybody's in the same boat.

G: That's right. That's it exactly.

RB: If you keep your mouth shut you can't get hurt.

G: Huh?

RB: Ed, if you keep your mouth shut you can't get hurt.

F: You see, the basic problem is...

HB: Want another drink?

F: Yeah. I'm gonna have another one.

HB: One, one more, come on, take one more.

G: No. No, no, no. That's it. Otherwise I get a headache. I gotta drive home you know..

HB: All right. Take a, take a...

RB: So what, you're gonna eat.

F: I drive to New Rochelle.

G: No, no, no, no.

HB: (Inaudible) on this one.

G: No, no, I'll stay, I'll stay with this. If I want more later I'll get more later.

RB: Uh, let's order.

HB: Give him one more, he'll pick it up. Let's order.

G: Otherwise I get a headache. Yeah.

RB: Let's order.

HB: And can we get some more of that, uh, rye crisp?

F: What are you having ROSE?

RB: I didn't order. Do you have anything else besides this?

Waiter: Like, uh, what would you like?

HB: Get a sirloin steak. It's good here.

F: Not me.

HB: Ed.

Waiter: See the menu there.

HB: I'm sorry.

Waiter: See the menu on the blackboard.

G: No, I

Waiter: (Inaudible)

G: You didn't look at the menu really.

Waiter: I serve the vegetables family style.

HB: All right.

Waiter: Okay.

HB: Okay.

RB: I'll have the baked, uh...

G: It's too confusing for me.

HB: Want some french fries? It's good here.

G: Huh?

HB: French fries are terrific here.

G: No I wouldn't eat no french fries.

HB: (Inaudible)

G: Little, little, little baked potato or, uh...

RB: I'll, have the baked potato.

HB: Yeah, real small.

G: Small baked potato.

HB: Everything should be hot, right?

Waiter: You want a baked potato too? Right sir?

HB: No.

RB: I'll have, I'll have a baked potato. You want a baked potato?

F: Not me. No.

HB: I'm gonna eat, uh,

G: Get hungry talking about it.

HB: Munch on it. (Inaudible)

G: And believe me, that's the furthest thing from my mind tonight was food.

Waiter: I'll set it up family style. (Inaudible)

HB: And how about salad?

Waiter: Italian, French, Russian, Roquefort.

RB: Should we get something first? You want something?

F: No. I don't want...no, nothing.

RB: You want a shrimp cocktail first?

HB: Take a shrimp first.

RB: How about you Ed?

G: I wouldn't normally, so I won't now.

HB: They got nice soup here if you want.

G: No.

Waiter: We have yankee bean. We have some (inaudible)

HB: They happen to have, uh, onion soup, you know?

Waiter: Consomme of chicken.

RB: No.

Waiter: No? No salad? All set?

G: No.

HB: Yeah. They want a salad. No? You want a salad ROSE? I don't want any. Give, give me roquefort...

RB: What do you have, salad with roquefort dressing,

HB: Give her (inaudible).

RB: But no, I don't want any, no garlic, no onions.

HB: No tomatoes.

RB: No tomatoes.

HB: No (inaudible)

Waiter: No (inaudible)

HB: All right, and, uh, bring some of the...

RB: That you can give me first. That you can give me now.

HB: And then you can bring some of the other, then the, uh, give us, uh (inaudible).

Waiter: Right sir. Right.

HB: And put a head on this.

G: No, no, no, let me stay with it. I can always order more later. Yeah.

RB: Go ahead.

F: But, uh, you see, getting back to, uh, what you say, my feeling is, everybody sit tight, everybody has to sit tight. This is what I've advised them. This is what everybody has done.

G: But am I in the same position as you people?

HB: Yes.

G: You know what I mean?

F: Except for one thing.

HB: Yes.

G: Huh?

F: Yes. Except for one thing.

G: I work for the government.

F: No, no, no. The only difference is this. If you are subpoenaed before the grand jury...

G: Yeah.

F: If you at that point refuse to testify...

G: Yeah.

F: Then your job is on the rocks. That's, that's the difference.

G: Yeah.

HB: Positively.

F: Other than that, other than that, there's no difference. Now let's put it on the other end, side. Put the shoe in the other corner, foot. Let's assume that you go down and you are guilty, if you are, and, uh, you tell them certain things.

G: Uh huh.

F: You lose your job anyway. So, uh, you're in the, uh,...

HB: You're damned if you do and damned if you don't.

F: You're in the position where, uh, which ever way you turn.

G: You see this, I, this, this KEN mentioned to me, but I didn't understand when he...

Waiter: Excuse me. How did you want your minute steak,

RB: Uh, medium.

Waiter: Medium?

HB: Make sure it's hot, though, huh?

G: You see this I, I didn't understand from him, but now, now I understand what you're saying. He started to tell me about, like I said I didn't spend much time with him like a few minutes, you know.

F: You see, the difference basically, remember...

RB: Wrong. He's told you wrong.

G: Now I understand why.

F: Remember it this way.

RB: What?

G: Well he says one way or the other, he said, you know, if you get called, he says your job is out.

RB: He did tell you that.

G: That's it! Yeah. This he told me, but I didn't understand what he talked about.

F: That's right. Whichever way you turn.

RB: Yea, yea, yea, yeah.

F: So the point is this, now you have to...

G: The only other thing, of course, is if you go in there and you lie and then, then you're in real trouble.

F: Oh.

G: Then you're in bad trouble.

F: That's a different story.

RB: Wait a minute.

F: Now you're...

G: Then, then you're in perjury

RB: Wait a minute. Wait a minute, but nobody's telling you...

G: Huh?

RB: But nobody's telling you to say certain things that you told the attorney. And, and who's gonna prove it? That's not possible, cause who's gonna prove it? You tell me! Who's gonna prove it?

F: Well, first of all, listen to me, be sens.., you're not even at that stage.

RB: Don't forget (inaudible)

F: Not possible, you're in a different stage, you're in a stage now where you refuse to testify. All right? Let's assume it does come to that.

G: Yeah.

F: Then you're put to the wall.

G: Yeah.

F: So?

HB: That's enough, get me some of that fried...

Waiter: Coming up, sir.

HB: Okay. Thanks.

F: Then you open up the next Pandora's Box. I mean see these things are not, this is why these people have to be very careful about what they do. In this there has been an investigation going on. These things are never simple as they look.

Let's assume, that you make certain statements. The next thing that he comes, he comes along with is tax returns. You've opened that up. That's in a different field. Then they come along. This is why I say to everyone, this is not only you.

HB: ROSE can I have some of those sticks?

F: Everyone is in the identical position. They're damned if they do, and they're damned if they don't. You think they're not in that same position? And this is why I have said and my advice is this to them. Refuse to testify. And this is what they did. I don't know if you're aware of it.

G: This is what they told me.

HB: (Inaudible)

F: I told her, you refuse to testify.

G: Everybody just take the fifth.

F: That's right. Now, same thing..(inaudible) Frank Fey was called down, same thing. Schiller was down. Everybody was down. This is exactly the same thing...

G: They had him down already?

HB: Yep. All of 'em.

F: Oh sure. Each and everyone of them. Everyone did the same thing! Refuse! That was the end of it! Now, the, uh, attorney's in a position, the US Attorney

is in the position, he's looking for corroboration. There's no question about it. But he can't find it. So that, uh, I say, my, uh, my best opinion of the whole situation is everybody sit tight, uh, well, I was shocked! Truly shocked. Anybody, I don't know how good this man is, I don't even know who he is and I'm not interested. I don't know what his standing is. Any man that's in the profession and makes a statement like that does not have experience. I tell you now.

G: Sometimes this is what happens when you, you know, you deal with a friend.

F: He is completely inexperienced in analysis. I grant you this, I understand that they've got...

HB: We got the biggest...

RB: Did you talk to him? You didn't talk to him, yet?

G: Huh?

RB: You didn't see him or talk to him yet?

G: No.

RB: He didn't start to do anything did he?

G: No, not to my knowledge, no.

F: I tell you now that we have...

HB: We got the biggest attorneys.

F: We, we have counsel involved in this picture. No secret. Simon Rifkind

RB: See?

HB: Ask your attorney who Simon Rifkind is?

F: Ask your attorney, (inaudible) former Federal judge absolutely agrees with me. No testimony whatsoever because he (inaudible).

HB: Someone, we went down with someone who wanted to testimony, he says...

F: We had attorneys.

HB: You know those attorneys (inaudible)

G: Yeah.

HB: Someone had a, wanted, didn't want to take the fifth. He wanted, he wanted to assist, he says I want, uh, an affidavit, with signature that he's doing it over my, over my...

F: This is now the judge speaking. He says before you go in I either withdraw from the case right now, or you will sign this statement stating that I have (inaudible) whatever you do is on your own.

RB: With the guy that insisted on talking. He insisted on talking.

F: He says, you do it on your own but not, not with my approval.

G: No kidding.

RB: So, he insisted.

HB: The only one/I ever, whoever....

F: We have counsel, counsel for, we have counsel for, uh, (inaudible) not kidding ourselves, for Schiller, for Fey, for Florence Behar. All of them. Everyone of them.

G: But not the, not the same guy.

F: No. No. Different one.

G: Because, you know.

F: Oh, you can't...

G: Don't look right.

F: Some are the same, but some of them are different.

G: Huh?

F: Some are the same but some of them are varied. He can represent a couple of each.

G: That's none of my business.

F: Yeah, I know. I'm saying.

G: Yeah.

F: This is why, I heard this, I was stunned. You're the first man that ever made a statement like that. I say they as I did before when we were talking you know my standing in the profession?

G: Yeah.

F: You know the stature I...

HB: (Inaudible) the most brilliant guy.

RB: Now wait a minute Harry, please (inaudible).

F: The, uh, I have never and I tell you this now, check on anyone that I have ever represented, I have never permitted in my life...

G: Never what?

F: Never permitted a client of mine to talk. Never! I've never even heard of it. That's why you, this thing shocked me. It's an amazing thing. You know and let me ask you this, does he have, is he experienced in these matters?

HB: Either yes or no, does he?

G: I don't really know. To be honest with you.

HB: He couldn't.

G: I don't really know.

RB: And he told him to go and come clean and tell everything about things.

See. It always...

G: Well he didn't say that but he said, you know, it is, it is a possibility.

F: Let me put it this way.

G: Yeah.

F: This is now and as you know I'm representing them its, but I'm leveling with you they tell me you've been a friend of long standing.

G: Yeah.

F: As a professional you always do and you look at it with this point of view. If I do a certair thing, what do I gain? What do I gain? Now

G: Yeah.

F: This is the thing. Now the answer is here is what do you gain? And that, that's the real, that the real $64,000 question. What do you gain? You can only lose. You can't gain.

G: You're right.

F: That is why I was, I was so stunned to hear it. Let me ask you this. I uh, I understand, by the way you can, you don't have to make any deduction, we're just talking openly now.

G: Al, as I said initially I was gonna do a lot of listening.

F: No, if I'm mis..., if I'm, if I'm, uh, I'm just curious about one thing.

G: Yeah?

F: When the, uh, FBI agents questioned you, what did you tell them?

G: I listened.

F: When you say you listened...

G: I didn't tell them,

F: You said nothing.

G: No, no. I listened.

F: Did you deny anything?

G: I just sat and I listened to the whole thing. They asked me to sign a paper.

F: Saying what?

G: Advising you of your rights. Like the thing you were talking about before.

F: Miranda.

G: I, I don't know what it is.

F: Yeah.

G: They advise you of your rights.

F: They advise you of your rights, your right to have counsel and so forth, yeah.

G: And I said I don't write my name without my lawyer being here. Any time, any paper any where.

RB: That's all right.

HB: Yeah. That's, that's fine.

RB: Sure.

G: My attorney should be present any time I do anything.

F: Meet your friend. (laugh)

G: So, so, he says okay.

RB: I don't breathe, uh, uh, without...

G: So he says okay. He says, well, he says, I want you to read it anyhow. So I read it and I said okay, so I read it. It was all right. And then they started to drag in

all about you people before, you know, why drag into it again...

F: Hm. No I was just curious as to what they but, uh, I can't ...

RB: But you see Al, you know, they don't mention...

F: I, I

RB: (Inaudible) But, uh, we have testimony that you took money from the Bernsteins.

F: Yes. No.

RB: U, I and I, and everything. Don't you think at that point that Ed should have said, uh, testimony that's not true. Shouldn't he have said that?

F: Right. Should have said it's a lie, but, however, what's the difference.

RB: It's a lie. I would have said it's a lie.

HB: I would have said nothing.

F: Over with.

RB: He said nothing. You see, I would, I would have said, "that's a lie."

F: That's in the past. Let me say this.

HB: It's in the past.

F: That's, that's in the past. The, uh,...

RB: You see you didn't hear them when they said that, did you?

F: You see in so far as...

G: Like I said, I just sat. I listened. I

let them talk.

F: See and I tell you this.

RB: And then they left him a card they told him (inaudible).

F: Again I say to you now with all due, shall I say, respect or, lack of respect for the advice that you received before, but uh, the best thing to do is to sit and say nothing also. Let me tell you something. Let me say this. They said, and I don't, this is a typical investigative technique. They said, uh, we know all about it. We have it. We have testimony. Let me, let's, let's be honest.

G: So what are they talking to me for?

F: How many times, how many times have you seen in the movies or on TV...

G: Yeah.

F: This is just a standard technique. You've seen it.

RB: They got testimony, they do like hell. If they had testimony they wouldn't come to you.

F: You see the problem is they walk in and they get, they get two accomplices. They get one on this side and they get one in here and they say, he told me the whole story, I don't need you. The next thing you know somebody talks. Am I, you've seen it.

G: Oh yeah.

F: It's a very typical standard ploy. The problem is, and it's understandable, when it's happening to you, you get nervous and you don't think.

G: Naturally.

F: Now, that's why I cautioned Rose, and I cautioned Harry very simply to say nothing they I told them what they were going to be faced with. You see, there are certain things that, that are standard, that lawyers use. I'll give you a typical example just to digress for a moment. Before you go in to try a case. I have always said don't forget when the lawyer on the other side is cross-examining you and he says to you, did you talk this matter over with Mr. Fayer, that your answer is, sure I talked it over with him. Now,

HB: It's tough (inaudible).

F: The reason is this, too many people I've seen it happen, they get nervous, and they say, well, they don't want anybody to get the idea they talked to a lawyer, so they say no. Now anybody looks, you have to be a dope.

G: Excuse me.

F: Really.

G: Yeah.

F: But they get nervous for the moment. You have to caution them. The same old smegieel,(Ph) they were told that. Now let me tell you this that, uh, Frank Fey was up to the office...

Waiter: Are you finished with the bread, here?

HB: Well, you may leave that.

F: Uh, and they told Frank Fey, we know all about what happened to your man, so tell us the rest of it! See. Frank Fey, Frank Fey, you know Frank?

G: Uh, huh.

F: Frank, says drop dead.

HB: He walked out.

F: He walked out.

RB: Uh, that's right.

F: Yeah.

HB: What are you intimidating me?

G: Gutsy.

HB: The hell with you and he walked out.

F: Yeah.

G: Where, where was this at?

HB: Up in right in the DA's office.

F: In Accetta's office, the DA's office.

HB: Where Accetta is, Accetta's office, he says what are you trying to intimidate me, entrap me?

F: He says drop dead.

HB: He walked out.

F. He walked out.

HB: Just like that.

F: Uh, see he has said this and this is the standard ploy. Don't forget I said, we know, let's not kid ourselves, uh, we have for out own benefit, been keeping our fingers on the pulse of this thing.

HB: We know just what's going on behind the scene.

F: The only ones that they have...

G: In other words you got your contacts.

HB: Yeah, don't, don't

G: All right

F: Only ones that they have, who have said anything is KAPRAKI and CARDONA and KAPRAKI is a separate thing.

HB: That's all.

F: And those two are the ones who are guilty and who have admitted it.

G: All right.

HB: (Inaudible)

F: Now, is anybody talking? But, I would really...

RB: Look, (inaudible) to say all right, Ed.

HB: It's a mistake.

RB: Ed wants to say something. What did you want to say all right.

G: Well, what, what about these guys that are you know, going over the New York Regional Office and stuff like that.

F: The hell with 'em.

G: What about them?

F: What about them.

HB: Yeah. What about them?

F: What about them.

RB: Go ahead.

G: Well, I don't know, I don't know what I'm talking about so I, I really don't know.

F: Yeah. As a matter of fact, forgetting, let's, let's forget the New York Regional Office, let me go a little bit, a step further. One of the questions involved is in connection with certain credit patterns. We requested that they go to Washington and pull out four thousand cases every year, and they showed nothing. Uh, at one time the Assistant US Attorney, Accetta, by the way I don't know if you know his name, if they gave you his name or what. Accetta is the Assistant

US Attorney. Accetta made a statement.

RB: (Inaudible)

G: Huh?

RB: (Inaudible)

F: Accetta (inaudible) made a statement.

(Inaudible)

RB: (Inaudible) Testimony from twenty seven hundred Puerto Ricans.

HB: Twenty seven thousand.

RB: Twenty seven thousand.

F: Twenty seven thousand.

G: There ain't that many people in the world.

F: (Inaudible)

RB: (Inaudible)

F: (Inaudible) Number two, now this is another thing he said, let me tell you something else. We can, we can prove that Eastern put mortgages on non-existent houses. So we said to him. (Inaudible) show me one. We'll plead guilty, right now. Show me one. Just one non-existent house. Further

RB: You, you, you.

HB: Wait a minute. Let him talk.

F: Okay.

G: Is he saying this to you or...

F: Me.

G: To you.

F: Stupidest thing I ever heard of. He doesn't know what he's talking about. First.

RB: Then he told you that they, we fleeced the people too.

F: Number one, first of all (Inaudible)

G: It's ridiculous.

F: Any FHA mortgage.

G: Yeah.

F: You then have a title company, you have a surveyor, you have an insurance company premium on this. You think everybody is in it? Come on. Show me the first one and I says you got a guilty plea right now.

G: Hmm.

F: We're still waiting. That's four months, so this is October or November,

RB: In October,

F: October I don't know even when it was.

RB: Er, uh, Ed's getting nervous.

F: Ed, from what I understand (inaudible) They haven't been able to find anything, so that...

RB: (Inaudible)

G: Hmm?

RB: (Inaudible)

F: Like I say, I, I, I am saying, the district attorney is fishing.

RB: He, he's gotta go back to the attorney.

F: Well, I tell ya this, I, I really, looking back (inaudible).

G: He's sure not acting like a friend, I'll tell you that.

HB: Want me tell ya somethin'?

G: Yeah

HB: (Inaudible) hear me out. (Inaudible) nothing.

RB: What I don't understand...

F: Well, I'll tell you this, now wait a minute. Let me tell you something, he's...

HB: He's not, he's not a criminal lawyer.

F: Now I'll tell you something, really and truly. You made a mistake.

G: How?

F: I'll tell you the mistake you made. He's bluffing and I'm going to be very frank with you. We've always been in the open to you. The Bernsteins know me for I don't know how many years I have been representing them, I don't know if you know the background. (Inaudible)

HB: Rose, twenty?

G: No.

RB: Thirty.

HB: Thirty.

F: Number one, you made a serious mistake in going to a friend.

HB: First

F: I am (inaudible) so if I owe them a favor, I have to do a favor, you do a favor and you still sluff it off. There's a big difference.

HB: There's a big difference.

F: What I'm getting...

HB: Oh, no butter.

HB: Oh no.

HB: Is that butter?

Waiter: Yeah.

RB: Oh, I, no.

G: Do you have one without the butter?

HB: I don't want butter either.

RB: You got a cholesteral problem.

F: The, yeah.

RB: Do you want butter?

G: I never do.

F: The...

HB: (Inaudible)

RB: (Inaudible)

G: Yeah.

F: You see the basic problem is...

G: (Inaudible)

F: Uh, I tell you this, unfortunately in this world, I have a family to support and I have a house to keep, and a car that I run and so forth. You know?

RB: I bet they take the butter off and bring it back.

HB: No, no, they, they broiled it so you won't even notice it.

F: (Inaudible). If I, uh, if I'm not getting paid I can't do, uh, but the easiest thing is to say go in and leave me alone.

G: Yeah.

F: Because this thing and I'll tell you this. If this...

RB: (Inaudible). Good.

F: It's good. Want to taste some of it?

G: Smells good.

F: It's chicken.

HB: What is it?

G: Tastes like a chicken stew really.

RB: (Inaudible)

F: Believe me. Take some.

G: With wine.

F: It is a chicken stew. That's all it is.

HB: Say you'll take that and let him bring (inaudible).

F: See if you like that? I'll take the steak.

RB: Oh, no, no. Let me try it.

F: The, uh,

HB: You'll like it, Bill, You'll like it? Huh?

F: Did you like it? Take it.

RB: No, no, no. It's all right.

HB: Here, change your order.

F: Change your order if you like.

RB: Oh, no, no.

HB: Change your order casue you don't use butter.

F: See, we run into a situation where...

HB: Rose, here's (inaudible)

RB: (Inaudible)

F: Where and I tell you now, and I didn't realize the, the, the background. See.

HB: While I'm waiting, I'll just nibble on this.

F: Look at this as a businessman, and the law is a business.

G: Yeah.

RB: (Inaudible)

F: When you, that's all right. When you go in and when I say to the Bernsteins, be quiet. The Bernsteins are gonna get served with a subpoena. They're gonna have to go down. I'm gonna go down with them. If I'm dealing with a friend of mine, I'm wasting time. When I deal with them, I submit a bill. Lets be blunt.

G: Sure

F: You know the story. I don't have to kid you.

RB: Yeah, but I mean, he, he, he advises me, uh.

F: Now I have, uh, I, I have,

G: Thank you. Yeah.

F: I would, I would give them and the difference is this. I will give the best...

HB: You want to do me a favor please? Take this out. Take that out.

Make sure it's hot. Ice cold. All right my good fellow bring (inaudible)

F: I would give the...

HB: Ice cold. Some ketchup here, please.

Waiter: Mashed potatoes please. You have baked potato (inaudible).

G: Yes, pass the potato. You're having baked potato, aren't you?

HB: No

G: No, okay.

F: I'll give you the best professional advice I can. Why, because I can give it because I am being paid. I'm an attorney. I'm working for a client. When you start to do it for a friend, I didn't realize this is the problem. Now he is looking to save trouble. Save time.

G: In other words what you're telling me is you get what you paid for.

F: You get, all right.

HB: Exactly.

F: There's no where (inaudible)

G: No such thing as good and cheap, huh?

RB: I, I didn't know that he was doing this Al. I told him to sit tight and do nothing.

F: I, the reason that I was shocked, really shocked I talked to the U.S. Attorney and I (inaudible).

HB: He may not even be, he may not even be his attorney, so why the hell at the time yestereday, that's enough.

G: Yeah,

HB: May not be for a month if you are.

RB: They went, they went to you to see what they could get out of you.

G: Yeah but,

RB: That's what they went to you for.

G: Yeah. (Inaudible)

RB: They're not interested in (inaudible), they interested in everybody else, but if you're going to (inaudible) then you're (inaudible).

HB: You're just a byproduct of the whole thing and then all of a sudden you're the guilty person. All of a sudden you become...

F: Well, that was stupid, but...

G: Let me take the butter from you.

RB: (Inaudible)

F: Because you must remember this. You are...

RB: Good, huh?

F: Yeah. Excellent. You are the, uh, the small fry here. You know what I mean? Really.

G: Yeah, that's the truth.

F: You're gonna get hurt. For no reason at all. You're foolish

HB: In other words they went out to...

F: Foolish to, to hurt yourself.

G: Well what's the possibility of this whole damn thing just finishing up or...

HB: It will finish up.

F: Well, I'll tell you this.

G: Yeah, but when?

HB: The thing will run out of steam.

F: Want me to tell you this?

G: What?

F: I'll tell you this. That's a question I don't answer.

HB: Rose, let me give you some of this. The plate's very hot. Let me, you don't want any?

Waiter: Would anyone care for anything to drink with the meal?

G: No thank you.

HB: Want some beer (inaudible) Ed?

G: No, no, no, thank you. Never have it.

HB: Ed, uh, how about some of this spinach?

G: Very good. Thank you.

HB: Uh, Ed, spinach?

G: Yeah, a wee bit. Thank you. Thank you. That's great. That's enough, just a taste.

HB: Then there's carrots there.

G: Thanks.

F: Say what the possibilities are.

G: All right, here's what I want to know

F: It depends on...

HB: Rose?

RB: I'll take some of that spinach.(Inaudible)

HB: (Inaudible)

F: No, no, spinach is (inaudible). It depends on...

HB: Want some of this Rose?

RB: No.

F: Basically the...

HB: How about this?

F: Those people in your position...

G: Yeah.

F. Might not, if we assumed, I don't know this to be a fact, because it hasn't happened yet.

G: Yeah.

F: We assume that everybody sits tight...

RB: Nobody says anything.

F: Then he doesn't have a case. Doesn't have...

HB: He hasn't any.

G: No?

F: On the other hand...

RB: If somebody's gonna talk...

F. Somebody, this is why I am here tonight.

If somebody opens up, then he's got the beginnings of a case.

G: The beginnings.

F: That's right.

HB: This has been going on for six months and he can't find any openings, so far.

F: Like I say, so far.

HB: Six months.

F. He's playing with this. More than that, August.

HB: (Inaudible)

F: So far he has been playing with this...

RB: August, September, October, November, December, January, February.

HB: A little before that too. A little before that too.

F: Playing with this since August. He has found no one.

HB: No one.

F: The only way he got these two is because they have been, been caught in the State Department hearings. Now other than that he has nothing.

G: Hmm.

F: So...

HB: Her evidence don't mean anything. Their testimony don't mean anything because they're crooks.

G: This, you said these two you're talking about this, uh, Cardona and...

RB: Kapraki and Cardona.

G: Well what the hell is the State Department doing with them? What the hell went on there?

F: What happened was...

HB: Automatic.

F. The State Department automatically held a license revocation hearing. But the State Department, if everyone sits tight there won't be any evidence. Now I know this there are several mortgage companies involved you were asked about.

G: Yeah.

F: I assume.

G: Yeah, they mentioned a few. I told you.

F: They have all said nothing.

RB: No, they didn't have any (inaudible)

F: They have all, I told you that before, they have all said nothing.

RB: Twice.

F: Now, they're in the position where they're reaching out for everybody.

G: Hmm.

HB: Cause they're desperate. They can't find anybody.

F: The reasoning, I cannot understand, they might

be giving you is this.

RB: So they're (inaudible)

F: Let's assume, for argument's sake, they get hold of "X".

G: Yeah.

F: Some other appraiser.

G: Yeah.

F: After they get him he admits it.

G: Uh huh.

F: Now he admits it so they tie them in. But that doesn't affect you. The only one that can affect you is you. Now this is what's puzzling me. I still say, I still say you're controlling your own, controlling your own destiny.

HB: I always said you were so methodical.

G: You've gotta trust somebody, Harry.

RB: Well, Ed, if that's the way you feel about it.

G: You know what I mean I gotta, uh, uh, I don't what.

HB: He gotta ask someone. He got the wrong advice.

F: It isn't a matter of trust, see?

G: Well, maybe the guy isn't qualified.

F: He just isn't qualified. This is a basic problem.

HB: He isn't qualified. He wouldn't want to harm you.

G: Hmm?

HB: He wouldn't want to harm you.

G: No, I'm sure he wouldn't.

RB: Well, he is gonna harm you. Why is, uh...

HB: He's got two guns (Inaudible) this and the Internal Revenue Service.

G: Hmm.

F: Who's gonna save you? I just can't understand, you aren't...

HB: If you feel...

F: What you're doing is you, you're giving them a case on yourself.

HB: Just for yourself and no one else.

G: Like committing suicide, ain't it?

F: I'll tell you this, as far as the Bernsteins are concerned, you're creating a lot of trouble but...

RB: We're gonna deny it.

F: They'll deny it.

RB: (Inaudible)

F. I'll tell you right now, they'll deny it. So,

G: Well, I'm just listening as I say there are some things I would say to them that I wouldn't say in front of you naturally.

F: Naturally, but what I'm saying is (inaudible) so that my way of thinking, the whole thing, uh, really puzzling.

RB: The only thing is...

F: That's the sort of a thing...

RB: So what does he have to do now, Al?

F: I would really and truly, tell you what I would do. I will give you some gratuitous advice, which is not really worth nothing, especially with inflation. Ha ha.

G: Ha ha.

F: I would say to your friend. And this is the right thing, he spent a little bit of his time. I'd give him a check. I don't know how much time he spent. A hundred, two hundred dollars. Whatever it is. Give him a check. Tell him you'll think it over and so forth, and just sit tight. If you're called at that point...

RB: But tell him not to do any investigating (inaudible)

HB: Don't do any investigating on his own, don't do anything. Just don't worry.

F: Please stay out of it. Please.

G: Stay out of it.

F: At the point, the point...

RB: Tell him not to do any investigating.

HB: You can tell him it may be dying down.

F: Right. If, but if you are subpoenaed...

HB: Then you'll call me.

F: I would make, no, that's I'm now talking about a horse of a different color. I tell you now if you are subpoenaed, then...

RB: Then we'll get you a good man.

F: I suggest, you get in touch, but I would suggest that you get yourself a good attorney. A good one in the field.

RB: Not, not this guy.

F: Not, not, not this one. I and this is without even, uh, knowing the man's name.

HB: He may be the most wonderful guy out there for that type work.

F: But, see, you're in a position, I tell you now, and, uh, the Bernsteins have told me certain things about the expenses. Let's put it that way. You know about it. I do. Uh, you're not playing a game. You're not playing, you know, marbles.

G: Well, I know that.

F: You need somebody that knows his business. That can really protect you. You know somebody who's gonna take an easy way out and throw you to the wolves, anybody can do that. That's easy. But you want somebody who is good and, and, is...

HB: This time, it's pros you need.

F: Right. If you are served, at that point, then you can get somebody who is good. Somebody who knows them in the field and what their reputation is.

HB: Say, say, say you were served on a Thursday.

RB: That's what I want to say. This I don't understan

HB: He says, Al, Al, Al, Al, Al

RB: (Inaudible)

F: He can't disclose what you're doing, that's not (inaudible)

HB: Al.

RB: He still shouldn't, tell him even with a lawyer. Even with a lawyer.

HB: Even with, say you were served on a Thursday and say.

G: I'm sorry I didn't hear.

RB: (Inaudible)

G: Yeah.

RB: (Inaudible)

G: Yeah.

RB: (Inaudible) even with the lawyer. There are certain things you do not say. Do you understand me?

HB: Cause it never happened.

RB: It never happened. There's nobody, nobody can prove it. Nobody. Let me tell you there's no way they're gonna prove it. How do you think I have been (inaudible)

F: That's what I said (Inaudible) Getting back...

RB: (Inaudible).

F: You know he was misled.

RB: Al, isn't it true, in order, in order to, in order to prove certain things strictly, wouldn't there be a third party to see.

F: No. You see the thing is this. Not necessarily a third party. We could happen to have a check.

RB: You'd have to have a check.

F: You'd have to have, uh, the bank deposits. You would have to have, uh...

RB: Yeah, the books, to to explain.

G: Corroboration.

F: Yes, Corroboration.

G: Some kind of corroboration.

F: This is why what, when you, you said to me, at the outset what really started it, that you were told, that they made an accusation is sufficient. Notin the United States of America. Not here.

HB: (Inaudible).

RB: I hope you feel a little bit better?

G: Yeah, but, uh, I'm very disappointed in my friend. But better to be disappointed than damned, huh?

F: That's right. I was really amaz, truely I, was. Like I say I would say I'd give him a check.

G: Yeah, naturally.

F: He's entitled. Thank him. You know what I mean. Otherwise you lose a friend.

G: Hmm.

F: But uh, uh,

RB: Let him, let him pay him. Let him be thankful, he give him a check.

F: Give him a check for, absolutely (inaudible).

HB: Give him a check for $100, he's done nothing on the case..

F: There is nothing, let me tell you, there is nothing wrong. You've decided to consult an attorney. Pay him a hundred or two hundred, whatever you...

RB: Yeah, yeah.

F: That's all. And then, uh,

RB: Yeah, but, then, uh.

F: Nobody, uh, nothing wrong with it, and you at that point you keep your, your friend. You, you keep him happy.

G: Yeah.

RB: And he can't talk, that's your lawyer he can't, uh

G: Yeah.

F: That's, uh,

HB: Privileged.

F: In fact, but this is, uh,

RB: (Inaudible)

F: Like I was really (inaudible).

HB: Al and I are on a friendship basis.

F: If the time comes, we're on a friendship basis not because I like them but because they pay me double. Ha. Ha.

HB: No, no. But besides that, we pay, we pay the fee. He's kidding around with you.

F: I'd love...

G: I'm glad he can laugh.

RB: You're right. You're right.

F: Government attorney's office.

HB: (Inaudible)

G: Yeah.

F: May I tell you this?

HB: (Inaudible)

RB: (Inaudible)

G: Yeah,

F: Ed, I want to tell you something.

G: I tell you I haven't, since I talked to you guys I ain't been sleeping.

HB: (Inaudible)

F: May I say this?

G: You know I ain't...

F: Really without kidding around is kidding around.

G: You take this stuff in stride you see, I don't.

F: Let me be very serious with you now.

G: Yeah.

F: There was, there was a time, yeah, when this thing came about.

RB: (Inaudible)

F: And I picked myself up one day and I'm kidding around, but really our friendship goes back a lot of years. There are many things that I have done, many things, believe me, they know and I know, that I have done, that are not even reflected on the bill.

G: Yeah.

F: I'm kidding around with this thing. But there came a time some months ago, when I was talk, I was on the phone, and I said to them "All right now", I was a little

shallow I was and I hung up and I said I'm gonna come over. Let me sit down and talk to you. They were very nervous. Just as you are.

HB: You're no different than we were. Believe me when I tell you that.

F: Right? Remember I came over to the house, and I sat down. I don't remember if it was a Saturday or a Sunday, whatever it was and I said let me tell you something. I said, I know you're upset, I know you're nervous, I know these things are preying on your mind. I told it to them, there's one thing you must do. You're gonna have to learn to live with it. You're in a limited situation, gonna take six, eight months, a year, I don't know how long.

HB: Five years, three years.

F: They're gonna play with it.

G: Hmm.

F: It's a hard thing to do, Ed. It's difficult I said to you and I tell you now, I give you my word, as I said to them, something or things may come out, things may appear in some manner, but I tell you now, that you are not going to be hurt, really hurt, by this. Hurt in the sense of being convicted

or anything of that sort.

And you're not.

For Christ sake I says look, I says, this is something that has to be proven and has to be established. It is not that simple, Ed. Sounds great, But they're gonna need all sorts of (inaudible) at this time.

So don't be so goddamned nervous.

I didn't even bill you for that advice. Ha ha.

RB: Oh, you gave me that for nothing.

HB: That cost you nothing.

F: That cost you nothing. That was...

But you see you have to, and I tell you now, and I'm telling you this really for one reason, because they say you're a friend of theirs for many years. You're going to have to live with this, this sword hanging over you for a while. I don't know how long.

G: Oi Vey.

F: It's a, it's a situation, but the only, the only one and I tell you now, there is only one person who can hurt you and that's you. And I tell you, you must also remember this, I don't know how much reading you do, or how many shows you see, movies, or TV you,

you watch. You will find that many of these things are based on (inaudible). Stop and think how many times you have heard attorneys say, whether you read Earl Stanley Gardner or any of the others, don't say anything.

RB: May I have some, Waiter?

F: How many Earl Stanley Gardners have you read? Or Perry Masons?

G: Yeah.

RB: May I have some coffee please?

F: What is the first advice to a client?

Waiter: Coffee?

F: You know Earl Stanley Gardner was a lawyer.

RB: What do you want, coffee, too?

HB: What do you want?

F: I don't care.

G: Black coffee.

Waiter: Black coffee?

F: Black. Black? Four coffees. I gonna have a little milk on the side.

F: I don't want any dessert.

RB: Why they got some home...

HB: They got good dessert here.

Waiter: Take a look at the menu.

F: You keep me on a diet so once...

RB: Give him half a grapefruit.

F: No, no, I don't wany any. Just get me the black coffee.

RB: What are you gonna have?

HB: They got good parfaits here, uh.

Waiter: Choice of sundaes, sherberts.

HB: Good pies here.

Waiter: Apple pies? Cheesecake?

HB: Cheesecake is delicious here.

G: A bissilla casa - kuchen, huh?

RB: Huh?

G: Casa - kuchen ist der besonderres hier, nich wahr?

RB: Ha, ha.

HB: Did you hear what he said?

Waiter: No.

HB: Tell him.

G: Cheesecake is your specialty, no?

Waiter: Yes, thank you.

HB: Tell what you said, tell him.

G: Casa, Casa - kuchen.

RB: Casa-kuchen

G: I'm not a Deutsch.

RB: No.

Waiter: (Inaudible)

RB: No, they go in the back.

F: See, see, the thing, and, and really if you read any of them, these are things that are, are basic, so basic, that, uh, uh, I'm amazed sometimes that, that people ignore them, you see them, you hear them.

G: I know it's not a matter of just thinking though, sometimes it's a question of reacting.

HB: Calm down.

F: Wait a minute, I mean you, you, you lose your objectivity. It can happen to me too. That's right I can understand it.

HB: We were very nervous at first (inaudible) the indictments come down, takes three, four or five years (Inaudible)

F: Now I tell you, may I interrupt you sir?

HB: Sure.

RB: Yeah, what are you...

F: Let me tell you something else. I have said to them and I'm gonna say this to you too. Everytime you hear somebody gets a subpoena, you should say good. I'll tell you why.

RB: That weakens their case.

F: Because it means he still hasn't got a case.

RB: Sure.

HB: Up...

F: As long as he is still subpoenaing, he hasn't got a case.

HB: Up to the last Thursday, they subpoenaed two more people, ROY SCHILLER and PAT BUCKLEY. Up to the last Thursday.

RB: Yeah, your, your...

F: See, this is why when I heard this thing I was so shocked because last Thursday...

RB: You above all.

F: SCHILLER and somebody else was down there. He doesn't have a case.

HB: You see, now he's going to the bottom of the barrel.

F: If you hear, when you say for example, New York and the regional office, do you want me to tell y something? The more I hear it, they're in the regional office.

HB: They don't know where they're going, what the hell did we have to do with the regional office?

F: When I get it back, the better it is for me.

HB: What did we have to do with the regional office?

F: Because they don't have it and this is why, you see, it is better to think it's better to think logically.

G: Hmm.

HB: You always think logically. You're the (Inaudible)

RB: (Inaudible)

F: Why would they if they had a case, why would they keep a subpoena. See you must remember this. Let me explain, I don't know if you're familiar with the procedure. What happens is thi The Grand Jury has one function only. They hand down an indictment. The US Attorney or the DA as the case may be, county or what not, appears before the Grand Jury and he has to establish reasonable grounds that a crime has been committed, and that X represents the, was involved in the crime. That's all he has to do. Once he has that he stops. He would be foolish to go further. Tell you why he would be foolish and now I'm talking again professionally. If he goes further we know who he's calling. We know who's testifying, so we begin to learn more about his case. Follow me? (Inaudible).

G: Yeah. In other words, you, you know what's going on down there.

F: That's right. Now, the more people he calls, the more we know about the case because as long as he needs a case he won't stop calling people. He's not gonna let us know. Who else can find out who goes in.

G: Yeah, but like you say, how long does he keep this up?

HB: (Inaudible)

F: It depends, it depends, want me to tell you something? It depends on how long his boss wants to let him play with you.

G: Well, yeah, you say better for you, but you know, let's look at it objectively. I'm here and I'm thinking of me right? Okay,

HB: I told you everybody. So think when you say we.

G: So, okay, so, all right, so let's say they, they call me down. Right? If I say something I'm in trouble, if I don't say nothing, I'm in trouble. One, one way or the other you're out of a job.

F: That's right. That's where the decision has to be made.

G: Yeah, so one way or the other you're out of a job at that point.

F: That will be up to them.

HB: That, will, we got, we, took care of that already, Ed.

G: Yeah.

HB: Yeah. All wrapped up.

G: This I don't need to be worried about then?

RB: No, no.

G: Huh?

RB: No, no.

F: This you don't worry about. your income, comes in.

G: You're sure about this?

RB: Positive.

HB: Your income comes in the same way.

RB: Yeah, so where do you go?

HB: And all your benefits.

RB: You go just where you wanted to go.

G: Huh?

RB: Where did you want to go?

G: Florida.

HB: That's where you're going.

RB: That's just where you're going.

HB: Another corporation.

RB: Just for you.

HB: Just for you.

G: Oh, I see, not with the Government in other words. What the hell is the difference. No big deal.

RB: What's the big deal?

HB: All right. You all set?

G: Sounds interesting.

HB: No, he's going to go Florida for me.

G: That would make Terry happy.

RB: All right.

HB: Want me to tell you something. If you want to go to Hawaii. (Inaudible)

G: Don't tell her that, she'd run out of town. Ha, ha.

HB: All right, I'm just, uh, now we'll just uh (inaudible)

F: You see, the (inaudible), the, uh.

RB: This is the ignition key. (Inaudible).

F: The, see, that is your, that's when you

G: You gotta play some of it by ear, in other words.

HB: Ed.

F: Yeah, when you originally made the statement you made the statement, that you were in a different...

G: It is good cheesecake.

F: Position (inaudible).

RB: (Inaudible). I didn't want any.

F: You said you're in a different position. That's the only difference in your position.

RB: This coffee is not hot.

F: That fact you say...

G: Oh, it's hot like fire. You're gonna burn yourself.

HB: You know, Rose, that's the whole problem. That's why you have stomach trouble.

F: You know what I mean?

HB: Now I know, now I know why

G: Yeah.

F: Other than that, it's, it's the same situation. We have others and I wish the hell that we would had won. This one concerns us too. And I, I keep saying to Rose every time they call somebody down, it means they still have nothing. It's a question of how much time and effort and money does the boss. The boss is the US Attorney, a fellow by the name of Morse. How much time does he...

G: Who?

F: Morse. How much does he want to spend on it. And the minute he says, we're through. It will be over.

RB: Look at, Ed...

HB: Ed, Ed.

F: So far he's got nothing. And, and I'll tell you this.

HB: Al

F: (Inaudible). He hasn't turned up a thing.

HB: Al

F: With all the FBI agents.

RB: You know what I'm gonna tell you. You know what I'm gonna tell you.

F: Yeah, I know.

RB: Hey Al. Hey Al. You know what I'm gonna tell you. He looks better already.

HB: You know, Ed...

G: I ate dinner.

HB: Ed.

RB: He looks better already.

G: I ain't been eating, I tell you that.

HB: Ed.

RB: No.

HB: No.

RB: No, no, no.

HB: I'm working behind the scenes.

G: Huh?

HB: I'm working behind the scenes.

RB: Ed, Ed.

G: Yeah.

RB: Ed, Ed, the last thing...

HB: If you say anything, it blows everything.

RB: The last...

G: Yeah.

RB: Wait a minute, the last thing he said made you feel better, too.

G: Yeah, sure, go to Florida.

RB: Now, now you know, you know (inaudible).

HB: Ed, Ed.

G: Yeah.

HB: Ed, this is you.

RB: You step right in (inaudible).

HB: You stop here. Over there, you start here. You see how I've got them close.

RB: (Inaudible).

HB: Not even one day. If you want to take a week, two weeks vacation before you start. You know with me. Did I ever reneg on anything?

G: No, no.

RB: No, no, no, no, no.

HB: I could use you for (inaudible).

F: As a matter of fact, we're leaving, we're leaving for an extensive...

HB: If you, no, now...

G: No.

HB: Let me tell you what I can use him for..

RB: He knows that.

F: The understanding is, matter of fact right now.

RB: We got two offices.

G: Where, down there? You got two down there?

RD: Yeah, they opened one in Orlando.

G: Orlando.

HB: We got Coral Gables, Orlando. Now we want to go, further up. We're gonna go into Georgia.

F: Atlanta.

HB: Atlanta.

RB: Atlanta is next. So you see...

G: Where in Georgia?

HB: Jackson, we want to keep on going (inaudible).

F: Atlanta. Atlanta is very hot.

G: I know.

F: I'm going down there, uh, Monday.

[illegible]: Sure, what we're doing, you see. We need...

HB: Ed, (inaudible) assigned that we don't know.

RB: Wait a minute.

HB: Who would I rather have, an outsider I don't know or you, who is a close friend. Now answer that.

G: Yeah.

HB: Enough. All right, Make sense?

F: As a matter of fact, let me tell you something, what shocked me, last week somebody said, two weeks ago, I was down in Florida. When was I down, about two weeks ago. I came back from Florida and I just had left DOUG HOMBERG. Somebody said to me, somebody had said to me...

HB: That we let go.

G: You mean he's with you now (inaudible)

RB: Sure.

F: Do you know how long he has been with us? Then he said to me I understand DOUG HOMBURG left. I started laughing.

HB: I heard the story, since I was with him.

F: Left? How could he leave, I was with him on Wednesday, I left. Oh, this is Thursday, I just flew up. We had lunch together. He's running the, uh, the entire processing section.

HB: Oh, fill it up please.

F: He's running the entire processing down there.

G: Yeah.

F: Ah, uh, you know, so that's uh, there's no reason (inaudible). Say, that's a hell of a funny story.

HB: Yeah, that story was just (inaudible). Just a second, Rose, DOUG HOMBURG. Now first it starts with Al. Someone tells Al, Doug Homburg is no longer with us. Where did that rumor start with the FHA? So just that day I'm downstairs, with Don Carroll went, Don Carroll went to, to speak to someone in the, uh, office, Mike Jancowitz (ph) comes over to me. He says Doug, I hear isn't with you anymore. I says I only heard that rumor a little while back. Up to twenty

minutes ago he was with us. I don't under-- stand. So, Doug says well how does uh.

G: Boy that's hot.

HB: Mike says this to me.

G: No, that's enough. I just wanted...

HB: Well I said, how come. He says well my friend called up. He knew that Doug Homberg was with Eastern. Now I want you to know that VA is in Jacksonville. So he calls up Doug Homberg. He says someone says to him, oh, he's not here, he's in Jacksonville now.

G: Oh, I see.

RB: He went up to Jacksonville to see the FHA.

F: The rumors, the rumors started.

G: Right away, right away a new rumor.

RB: Now let me tell you something.

F: Funny as shit.

HB: Now how do you like that? No malicious gossip.

F: May I say this? (Inaudible).

G: Dynamite. No, no, no, but this is the way things happen, you know, perfectly innocent remark, right? They say he's not here.

RB: E.G. now listen. This you'll like. This you'll like. Hey, give me.

G: Yeah.

HB: (Inaudible).

RB: (Inaudible).

G: (Inaudible).

RB: All right, Al, tell him what you gotta do. I tell you, now, let me just, let me (inaudible). Ed, do you remember, uh, were you in the service? I said what were you in?

G: Huh?

F: What were you in?

G: Army.

F: I was in the Navy. Didn't they, didn't you have a, uh, a statement that I volunteered.

G: Never volunteered.

F: Cause that's the situation right here(inaudible).

G: I volunteered once and I got pushed out of an airplane for it.

F: There you go. What were you, what, a paratrooper?

G: Huh? Demolition, radio.

F: I was UDT.

G: Huh? You were UDT.

F: Yeah.

G: Oi Vey. That's worse than me.

F: Worked with demolition.

G: Yeah.

RB: Now, now, now listen. What's it gonna be? (Inaudible) attorney.

F: All right, pay him. He's a friend. It's a family matter.

G: Natur, naturally I would.

RB: Now what should he say to the attorney. Tell him not to do anything?

F: Tell him you thought it over. You decided to just sit tight for a while.

G: Sit tight.

F: Do nothing and you'll let him know but you feel you want to pay him.

HB: (Inaudible) I understand there may not be nothing doing. Sit tight. That's all.

RB: Ah, tell him sit tight and do nothing. Sit tight. You don't want him to do anything right now. Leave it alone You don't want to do anything now.

F: Tell himdon't call, let, let it sit, if in the event you are, in the event you are subpoenaed (inaudible) then you can tell him no. But you better tell him no.

RB: He's gonna make it impossible. So he doesn't go and do things on his own. We can turn around and sue him, but he's a friend of yours. (Inaudible).

HB: Tell him not to do anything. Drop it right here and there because the (inaudible) it is under control.

F: Tell him to drop it. In the event you are served with a subpoena, then we'll see about a top drawer. Then you're, then you're, then you're top drawer man.

RB: If he tells you you don't owe him nothing or anything you insist on paying him something.

F: No he's entitled to it. What's right is right.

RB: I know, he's (inaudible)

G: Yeah. Well I would, I would pay him anyhow. Yeah.

F: No. He's entitled. That's right.

HB: The man is entitled to it, therefore he should get it. Friendship is friendship, but...

G: No. Oh, he knows, he knows damn well that if he says no to me I'll take it to the house and give it to his wife. He knows that because I, I wanted to...

F: That's right.

HB: Give him a check.

F: (Inaudible).

G: You know I used him as an attorney and uh, he, he

didn't want to take anything for it. No he say forget about it. I went down to his wife and left it with his wife. That's embarrassing thou

HB: You always say it's for legal services

G: Yeah.

F: Now, uh, uh, again, as a friend, uh, with (inaudible) then you get (inaudible).

RB: He'd better do it right but he'd better do it right away. He better do it right away.

HB: See him tonight Ed. Go right from here over there and then you call me about the, uh,...

RB: (Inaudible)

G: Huh?

RB: Did he (inaudible), did he (inaudible)?

HB: Don't say he didn't talk too much.

G: No, no, no.

HB: And, uh, you can call me around 9:30 about the, uh, the engineer with the hydrostatic. condition.

G: Huh?

RB: There are certain things you don't talk, you know.

G: No, no, no. No, expecially from what you say on the telephone. You know, uh...

F: You never know.

G: Huh?

F: You never know.

RB: I think what's the best thing to do instead of calling up, let him, give him your number, let him go outside to a coin booth and call you I think (inaudible), I don't think he should call from home. Don't you think I'm right?

HB: (Inaudible) number, talk to him, tell him (inaudible). So what's the big deal.

G: No big simiss (phonetic) Yeah. I'll call him, call him collect, oh from the phone booth. What the hell is the difference?

RB: Yeah, call him from the phone booth.

G: Hmm.

RB: (Inaudible)

HB: Give him the two hundred dollars Al.

RB: Cause to Al you can talk.

HB: Al you can talk to, but, uh,

RB: (Inaudible)

G: Hmm?

HB: You can talk to Al (inaudible)

RB: (Inaudible).

G: These are both in the same place?

F: Yeah, at the house.

HB: No, that's those two houses.

F: Home numbers.

G: It's 914. Both 914.

F: Yeah.

G: That I can remember.

F: Yeah 914. Yeah.

RB: Ed, Ed, Ed, Ed.

G: Yeah.

RB: If we, if we have the (inaudible)

G: Huh?

HB: (Inaudible)

G. Well Al isn't gonna represent you then?

F: I have, I have representatives, I have engaged, I'm, shall we say directing things. The theory is I, we have engaged various attorneys for Eastern Service Corporation.

RB: We, we've engaged a number of attorneys for people (inaudible).

G: I see, Oh, I see. So it would be in conflict.

RB: It would be a conflict of interest.

F: I don't want to be involved with anything that happens here. I don't want to involve Eastern Service Corporation.

G: No.

F: Even a hint.

G: Yeah, that's right.

F: Rose, Rose, remember is a separate entity completely.

G: Yeah.

F: I represent Eastern. I have somebody representing Harry and Rose.

G: Right.

F: And somebody representing Frank Fey. And somebody else.

RB: And Florence Behar (inaudible). Yeah Florence Behar (inaudible).

HB: We got three different attorneys. We got her the attorney.

G: You're gonna run out of talent one of these days.

RB: Ed, Ed, Ed.

F: I'll tell you this...

G: I hope you don't, I hope you don't save the, the worst one for the last.

RB: Ed, Ed.

HB: No, no. Wait a minute.

G: Huh?

HB: No one knows, no one knows our...

RB: Ed, Ed. (Inaudible), good, because everybody is to tell the attorney (inaudible).

F: I never heard of you.

HB: We don't know nothing. We don't even know your name.

F: I know. What I know is this. I have a long standing relationship.

G: Yeah.

HB: They don't know anything.

F: Like I say this is, uh.

HB: They don't know, don't let them tell you we know, come on tell us everything. All right look, remember when I called you.

RB: Remember I told you that Rita had said that she saw you come up (inaudible).

G: Yeah.

RB: She also said that she saw Mike Jancovic.

F: She also said that she saw Condon up there.

HB: Condon was up there.

RB: She, she also said she saw Lawrence Condon up there.

F: Condon was up there.

G: Are you kidding me?

F: That's absolutely true.

G: You mean he's died and he's in the box. They're holding the wake. That's the only time he'd be there.

F: Absolutely. She testified to that, and...

RB: No, Condon was up there.

HB: You know who he was with?

G: You're kidding.

HB: He was with Fred Martin that time to look at the plans. He was with Fred Martin that time.

RB: Condon was up there. Fred Martin, Fred Martin...

F: Fred Martin came up to see him....

HB: He used same (inaudible)

G: Oh?

RB: Ed!

F: Fred Martin came up to look at the plans.

HB: He said come on. We'll take a look at the plans.

F: She stated that, yes, Condon is at the opening up to look at the plant that we would be building.

G: You know, now that you mentioned, uh,

RB: See, you see...

HB: What?

G: Fred Martin did come to Condon's luncheon.

HB: Oh yeah?

G: Oh yeah, yeah, yeah. Yeah saw him there, said hello to him.

HB: Fred Martin...

G: Came to the luncheon.

HB: You know Don Carroll and I are pretty close. I don't know if you know that.

G: How's Martin doing now though?

HB: I don't know. I don't speak to him. You know Don Carroll and I are close. I think you know that.

G: He came out of left field. I didn't, uh, and he is in, he lives in my neighborhood.

HB: I know who his rabbi is too.

G: Huh?

HB: I know who his rabbi is. He and I went to his dinner out in Suffolk.

G: Yeah.

HB: You knew that.

G: Well, you took, you told me about it. I didn't, I didn't know that you had been out there.

RB: I well, we went with him.

G: Oh yeah?

HB: Yeah?

RB: He wasn't afraid to go with us.

G: Huh?

RB: He wasn't afraid. He's, he's known me for 15 years.

HB: Do you know that I'm, did you know I'm in the office? Did you know that he stayed at our place once (inaudible)? I don't know if you know that or not.

G: No. I don't know.

HB: Oh, sure.

G: Well, you see he, he, he's new so he's a little, little aloof. Yeah I know that he's with Lawrence Cedarhurst.

F: Did you see our personnel down there, today, training him.

G: Today?

HB: Yeah. We, we showed him what the insurance is about.

G: I wasn't even in the office today.

HB: We showed him what the insurance is about.

RB: Are you, are you, are you still in Brooklyn? Are you in Brooklyn again?

G: I can't get out of the goddamn place.

RB: What are you doing in Brooklyn?

G: Huh?

HB: Anything you want I'll do for you.

RB: What are you doing in Brooklyn?

G: I'm doing a lot of reviews. Occasionally an initial. Uh, like typical stuff, like now tomorrow I got two cases that they were committed on, and no let's see one of them was committed on and it expired. Excuse me. The other one was rejected. In any event they both expired.

Even, you know the rejection expired and now all of a sudden we get two new applications, so we pulled the old files and they sent them out with them. Now they've gotta know what's what's on 'em. I'm doing a lot of review work too. Some of these guys are real, you know, meatheads. They don't know what the hell they're doing.

RB: Yes. Sullivan, uh, Sullivan and Kudelka are running the show there, huh?

G: Yeah, but I understand Coughlin took over...

RB: Mike Jancovic

G: Yeah.

RB: They're gonna kick him upstairs.

G: But doesn't, yeah, but doesn't that jump him over HC, or is he different spot like...

HB: I'm the one that (inaudible)

G: You mean you did Coughlin a favor?

HB: Yeah, yeah.

G: Really?

HB: He worked (inaudible)

RB: Listen it was terrible in there what he done.

G: Oh, you're telling me

RB: He was, he, he was no gooding everything. Now that place is the best thing that's gonna be for him.

HB: You know, we have, shh!

G: He'd still be in the same position.

HB: Shh! you know we have (inaudible), he asked me the set up. Who's who and who's who (inaudible) and who should go here and who should go there. Why do you think MIKE JANCOWITZ (phonetic) is where he is.

G: Well MIKE is good, I mean, MIKE is qualified.

HB: All right, so, uh,

G: And so is HERBIE. He's long overdue.

RB: Well HB. Yeah.

G: Yeah, he's long overdue for that.

RB: HB was deprived of that spot a long time ago, wasn't he?

G: He's a good man. He, he, yes, he was, he was really deprived. He was cheated on that, really. He deserved it a long time ago.

RB: And he says he knows who cheated him.

G: Yeah, 6, 7 years ago he deserved that spot.

RB: Yeah.

G: Damn shame.

RB: Yeah, but listen, let me tell you something. If's gonna make you feel any better your not the only one that the FBI been talking to.

G: No?

F: Oh yes, that's right. That's...

G: You mean in my outfit?

HB: (Inaudible)

RB: Don told me, Don Carroll (inaudible).

F: That's right. Yeah. I heard that.

RB: (Inaudible).

G: Oh, yeah.

RB: Yeah.

HB: In the courthouse you see, Don comes out, I want to tell you something.

RB: He says, goddamn it on the new projects coming in, he says, I'm gonna find out what the hell this is all about.

HB: Don Carroll,

RB: I want them to leave my boys alone.

HB: Don Carroll comes up to my office about twice a week.

F: I thought, I thought that he knew.

RB: Naw, he didn't know. He doesn't know anything.

HB: He comes into my office twice a week. He and I, Waiter.

RB: He told me, he told me.

G: Sure.

RB: Huh?

G: Sure.

RB: I bet you Cronin might even (inaudible).

G: Well, he's, uh,

RB: Now listen...

G: You don't worry about him.

HB: Now this is what I want you to know, I want to tell you, and I can tell you right in front of / (Inaudible). Our attorney in New York City says come tell me everything. He says did you ever pay anyone.

RB: What?

HB: You think we're crazy. Never a penny at Christmas or nothing. I wouldn't even give a cigar.

G: Uh huh.

RB: Oh.

HB: He says are you sure. I says that's right. Anyone who ever said it they're a damn liar. Let them show me a receipt. Let them show me anything.

G: No, that's all right. Who's gonna show a receipt? Who got, I, I don't have a receipt.

HB: That's right. Show me.

RB: We're complete...

G: No one's got a receipt. Right? Huh?

HB: With our own attorney.

RB: Ed, you see what you did to (inaudible).

G: You've asked me for receipts?

HB: Wait a minute, our own attorney, our own attorney.

RB: (Inaudible) What you did your doing to yourself

G: Huh?

RB: Don't you see what you're doing to yourself.

HB: Your attorney can say, your attorney can say you did this, that and the other thing and you will be wrapped up in an Internal Revenue problem. Right? See you're admitting to something that we never even gave you and then you're admitting. So then the Internal Revenue, I don't care what he says, we never gave you. You say he gave, where's the tax money.

G: Yeah.

RB: You're on the hook.

G: Uh huh.

HB: You're not going anywhere fast. Now look.

G: You're sawing, you're sawing the limb you're sitting on. Yeah.

RB: He could make, oh.

HB: I want to tell you something Ed, listen to me. The day that you ever get to the stage that you gotta leave...

RB: You can have it. I don't think it will ever. It won't,but if it does (inaudible)

HB: Take a weeks vacation and come work for us.

RB: That's why. I gonna tell you now.

HB: No problem.

RB: Ed.

G: Yeah.

HB: Work here or in Florida.

RB: Be cocky. Be cocky.

G: Yeah.

HB: Like you always were. You were very much evasive. (Inaudible)

RB: If anybody ask you anything, the answer is no, no, no.

HB: I don't know what you're talking about.

F: I tell you this and I can assure this.

RB: You deny everything.

HB: Cause we don't know what you're talking about.

F: That these two as far as anything is concerned...

G: Yeah.

F: Will not talk.

HB: We don't know what you're talking about.

F: This I tell you.

HB: We don't know what you're talking about.

F: I'll control that situation. That's why I say I'm not concerned over it. They, they if anything, if anybody...

HB: Shh, wait a minute, let me tell you something.

RB: Harry, wait a minute.

F: If anybody, anybody is going to do anything to you I tell you now...

RB: (Inaudible)

HB: And it's so much simpler (inaudible) you deny it. We don't know what you're talking about.

F: Oh, no, no, no.

G: All right, so what, so what do we do with this this, Kapra, this Kapraki thing. This is what's gonna come with it or what?

F: As far as Kapraki is concerned, Kapraki and Cardona are not enough justification.

G: Yeah.

F: (Inaudible) And he's fishing. He's going all over the lot; and you see if...

RB: Whatever she says, she's a liar.

F: Whatever she says, whatever she says is absolutely not true.

HB: She's a damn liar.

F: Absolutely not true.

HB: She's a completely worthless woman. They call her the scum of the earth. They call her a (inaudible).

F: Number one, may I, may I say, let me put it on this basis. I, I would say that, a matter of, uh...

G: I hope he don't send me the bill for this one.

F: Ha ha.

G: Ha, ha.

RB: What, what?

HB: We'll get the bill.

RB: What, what?

HB: We get the bill.

G: I hope he don't send me the bill for asking.

RB: No, he wouldn't. We get the bill.

F: See, if any subpoenas are served, get an attorney and a good one. Believe me, I approve of him. I would absolutely recommend. There's no reason to depend on your attorney. I would absolutely recommend a refusal to talk. Because of the job, you know where you stand here.

HB: You're still work with us.

F: Right. But, uh, if you do talk you're finished anyway.

HB: You're finished anyway.

F: So you might just as well not.

G: Hmm.

HB: If you talk is a jail term.

F: At, at that point though, if then, and then, and then, then you're in an Internal Revenue (inaudible).

G: Yeah. The other thing.

F: Darn right. I just can't understand it. That's why I'm shocked at you.

HB: He gets you or DICK HENDERSON, Al, may I say this? When you get the subpoena, now I'm speaking confidentially, call Al...

RB: Call Al right away.

F: Oh, well contact me.

HB: Call him right away.

F: Let me know if nothing else. No problem at all.

RB: Yeah, call him, call him.

HB: Directly.

RB: Did he, did he get your number IV 9-(inaudible)

HB: Yeah, he got that all ready. Any problem, day, night or anytime.

G: Yeah.

HB: We'll pick up from there and we'll pick (inaudible).

RB: You know what I think we better do when he calls, it's Mr. Edwards.

G: Hmm?

HB: Mr. Edwards.

RB: Mr. Edwards.

F: May I tell you something?

G: In other words don't use your name.

HB: It doesn't matter.

F: It doesn't make any difference. You must remember this, I represent US Life.

RB: Yes.

F: I represent all the others. I call, I, I call up bankers. It so happens I never, I never really, you know, spoken to an appraiser. But how many times have I been with Cronin and I've been with Bose and I've been with Jancovic. I was with Condon. I was with Martin. I've been with them all, you know, on various problems.

HB: He's in the industry. He's in the industry.

G: Yeah.

F: Innocent enough. There's nothing wrong with it. I'm gonna have (inaudible) attorney, I'm not even, don't forget, I'm not part of Eastern.

RB: No. That's right.

F: I'm not representing as the bank's attorney I have my own practice.

HB: He represents...

G: Yeah.

HB: Five clients like us. Like us.

RB: Hey Ed.

HB: Plus his other clients. I mean (inaudible).

RB: Your, your, you're gonna go see this guy now and then you're gonna call Al.

G: Yeah.

RB: You know even if you call him late tonight (inaudible).

G. What time are you gonna be home?

HB: (Inaudible) All right he'll be home, but before 9:30 - 10 o'clock.

F: Don't worry about it.

RB: Oh, don't worry he, he doesn't go to sleep.

F: No problems.

HB: You go and see him before you go home and then call Al, say after 9.

RB: Yeah.

F: Anytime.

RB: See to Al you can talk (Inaudible).

HB: Yeah.

F: He knows that.

RB: (Inaudible)

HB: Say 9:30.

F: Say it was nice talking to you. Say everything was taken care of. That's all. In other words it was straightened out nicely, period.

G: You mean in other words don't call you, call him.

HB: Call him up.

RB: Call him.

G: Yeah.

HB: I spoke to my friend and uh,

G: All right.

F: That's all.

HB: I'd tell him I straightened the matter and that's it. All right, let's go.

RB: (Inaudible).

G: Okay.

F: (Inaudible).

G: Yeah, Keep going. I sure appreciate your spending the time with me.

F: What's that?

G: I feel better for it.

F: Ed, really I mean, don't aggravate, don't worry.

HB: Ed, if you're worried about future income, you gotta get going with Eastern right away now or one of our other corporations and your salary will be...

G: You got a spot there?

HB: I got a spot there. I always said I had a spot.

G: Yeah.

HB: Immediately. Take one week's vacation and start right off. Should I say more than that?

G: No. Shoot no.

HB: You start right off. Take a week's vacation at my expense. That all.

RB: (Inaudible)

G: All right.

HB: Ed, in all the years were we, were we ever cheap on anything?

G: No, no.

RB: All right, you gotta go (inaudible)

G: Yeah. Okay. I got business to take care of.

HB: Okay.

Waiter: Good night. Thank you.

G: Good night. Thank you.

HB: Al, I got the check. I got it, I got it, I got it, come on, I got it.

RB: Harry let Al, let Al, uh, heat up the car a little.

HB: Heat up the car.

F: Okay. I'll heat the car up. Give me, give me the leather one first and I'll heat the car up first, okay. I'll heat it up. That's right. Okay.

G: The heat is so bad you took the valve off.

F: Yeah. It's all taken care of. Ed, it's a pleasure.

G: Okay. God bless.

F: Let me go heat the car up (inaudible).

G: Thank you very much for your... It was sure a treat.

F: Don't worry.

G: Huh?

F: Don't worry.

G: Don't worry?

F: Believe me.

G: Okay. Yeah mail order special. I got a hat in there too, I think. Least wise I had it before.

Unknown Female Voice: It's here.

G: Yeah, it's there. Let me give you a hand with it. Let me sit it here a moment. Mind your your lamp there. I don't want to hurt it none. You got a coat on already?

RB: Who me, I got my coat.

HB: That might be my coat.

G: We got an extra.

HB: No, no that's not our coats.

G: We got an extra coat here.

HB: No, no mine is just, uh,

Unknown Female Voice: Wait a minute. Put that...

HB: Black one.

G: That one is mine.

HB: Mine is this one I think. There's black gloves inside. Yep this is mine.

G: Yeah, but that one ain't ours.

Unknown Female Voice: This one here?

G: No ma'am

HB: No.

Unknown Female Voice: I think there's too many you have there.

HB: Did we?

G: I guess so. Unless, unless Al has gone queer and is wearing ladies' coats. I'll get it. Here you go.

RB: How is JJ doing, all right?

G: He called me, he called me up Saturday night or Sunday night I forget, and he just talked, that's all and he seemed to talk aimlessly. I don't know, uh, his eyes were bothering him.

You know he has one bad eye. He said that's improving a little bit but the other eye is a little worse.

RB: Who was the (inaudible)?

G: He's doing property management work I understand.

RB: O yeah?

G: Yeah.

RB: (Inaudible)

G: Not that I know of.

HB: Right here. We'll wait a minute. All right, go ahead Al.

G: Ah, you may as well go ahead. You ain't gonna get it that much hotter that much quicker.

HB: All right. Ed, Ed, take it easy.

G: All right. God bless, and thank you very much for being here.

RB: Okay.

G: Yeah.

HB: So long.

G: God bless, take care.

HB: Wait a few minutes...

G: Yeah.

HB: Until it warms up.

G: All right.

EDWARD J. GOODWIN and ALFRED FAYER, 2/12/72

ALFRED FAYER: Hello?

EDWARD J. GOODWIN: Hello, Al?

F: Yeah

G: Goodwin.

F: Oh. Hi ya?

G: How are you doing?

F: Okay.

G: Listen. Harry asked me to give you a yell.

F: Yeah

G: What's up?

F: UH, I, uh, I...

G: I'm on a pay phone on the outside.

F: Yeah. I know, I have been speaking, uh, to uh, one a pretty good attorney.

G: Yeah

F: An old-timer in Mineola

G: Yeah

F: Which is handy for you, if you're interested.

G: Un-huh

F: Uh, his name is, uh, Jack Korshin.

G: Jack who?

F: Korshin. K-O-R-S-H

G: Wait. Let me write this down. Hold on a second. Get something to write on. And a pen that will do it. Jack--

F: Korshin.

G: K-

F: K-O-R-S-H-I-N

G: Okay

F: His office is in Mineola.

G: Un-huh

F: He's, uh, a good, top drawer attorney.

G: Yeah.

F: Uh, he may be interested. I mentioned it in passing to him.

G: Un-huh

F: Of course, he'd want to sit down and talk to you.

G: Yeah

F: Uh, but I say he, he's a real pro.

G: Yeah, knows what he's doing, huh?

F: Pardon me? Oh, yeah.

G: Yeah

F: And, uh

G: How do his fees go?

F: Well, uh, I really didn't discuss it, but this you can talk to him, but you know, uh, that there'll be no problem about.

G: Yeah

F: So, uh,...

G: In other words, if I run into any dead roadblock there, get a hold of Harry on it.

F: Right.

G: Yeah, Okay.

F: Okay

G: Yeah.

F: But he's good. That's what I say, he is really....

G: You got a phone number or address for him?

F: He'll advise you properly and well.

G: Do you have a phone number then?

F: No, I do not. I have it in the office. But it's in Mineola.

G: He's in Mineola, huh?

F: Right, make sure you get his ho, his offic phone because he lives in Sands Point somewhere,

I think, or

G: Right.

F: out in that area.

G: Okay

F: But I can recommend him very highly if he'll take the matter, he's good.

G: Okay

F: Okay?

G: Yes, sir.

F: Okay.

G: Appreciate your interest.

F: Right.

G: Fine, thank you very much.

F: Right.

G: Bye now.

A 179

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT NEW YORK

----------x

UNITED STATES OF AMERICA :

-against- :

ALFRED FAYER, :

Defendant. :

----------x

72 CR 589
75 CR 43

United States Courthouse
Brooklyn, New York

February 19, 1975
9:30 a.m.

Before:

HONORABLE JACK B. WEINSTEIN

BURT SULZER
OFFICIAL COURT REPORTER

Appearances:

A 180

DAVID G. TRAGER, ESQ.,
United States Attorney for the
Eastern District of New York

BY: GARY WOODFIELD, ESQ.

JACK KORSHIN, ESQ.,
Attorney for Defendant

THE COURT: Are you all prepared to proceed?

MR. WOODFIELD: Yes, your Honor.

THE COURT: A jury has been waived in this case and it is being tried by the Court. I have received a brief from the government and I have read the two main cases cited by the government: Cole, 329 F.2d 437 and Cioffi, 493 F.2d 1119.

Call your first witness, please.

MR. WOODFIELD: Yes, your Honor.

The government calls Francis D. Terrillion.

F R A N C I S D. T E R R I L L I O N, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. WOODFIELD:

Q Mr. Terrillion, where do you live?

A I live in Levittown in Nassau County.

Q Where are you employed?

A By Transworld Airlines at Kennedy Airport.

Q Did there come a time in March of 1971, when you appeared in this courthouse?

A Yes, sir.

Q What was your reason for appearing in this courthouse?

A As a result of a subpoena for jury service.

Q And did you have an occasion to serve on a jury?

A Yes, sir.

Q What jury was that?

A That was a Special Grand Jury, March 17, 1971.

Q And did you hold any position with that Grand Jury?

A Yes, sir.

THE COURT: Excuse me, do you want this normal testimony?

MR. KORSHIN: I don't know where it's leading.

THE COURT: Why are you offering this witness?

MR. WOODFIELD: Just as background information, your Honor. One, to show what this Grand Jury was investigating at this time, that it was investigating FHA fraud and corruption in the real estate industry within the Eastern District of New York, and, further, that employees of both the FHA and members of the real estate industry, particularly -- were called before the Grand Jury and that members -- employees of Eastern Service Corporation

were called before the Grand Jury and that they exercised their Fifth Amendment rights.

THE COURT: Is there any doubt about that?

MR. KORSHIN: No question about it. But there is a question of the time when this occurred.

THE COURT: I see. Then you want the witness --

MR. KORSHIN: I don't care. If I can be told when this occurred --

MR. WOODFIELD: Your Honor, I have copies of the testimony of the witnesses in the Grand Jury when they did exercise the Fifth Amendment. I will show these to defense counsel and if he's satisfied with those, we can just enter the names of the individuals and the dates which they appeared.

THE COURT: Why don't you do that. You should have done that in advance. It would have helped. It's helpful to give everything to counsel for the defendant, in advance so we don't waste time.

MR. WOODFIELD: Your Honor, I did attempt to gain some stipulations concerning the Grand Jury investigation of this matter and Mr. Korshin and I couldn't reach an agreement.

THE COURT: I am not saying that critically.

You are proceeding properly but it's helpful to exchange in advance.

Mr. Korshin, there is no need for you to rush. We will take a short recess so you can go through that.

We will take a five minute recess.

(Recess)

(Continued on next page.)

MR. KORSHIN: I am prepared to concede, if the Court please, that on October 29, two persons were called before the Grand Jury, one was Harry Bernstein and the other was Florence Behar; that on December 1, 1971 a witness named Frank Fay was called to testify before the Grand Jury and that on February 3rd, 1972, a witness named William Roy Schiller was called to testify before the Grand Jury.

MR. WOODFIELD: I believe there is one further one. They may have stuck together. That is October 29th. There were three individuals who appeared before the Grand Jury. I believe you stated, Mr. Bernstein and Florence Behar. There is also Rose Bernstein's testimony.

MR. KORSHIN: The one I missed was Patricia Buckley, -- they were stuck together. I will stipulate that a witness named Patricia Buckley, was called to testify before the Grand Jury on February 3rd, 1972.

THE COURT: Why don't we just mark the transcript is in evidence.

MR. KORSHIN: If the Court please, I am not bound by anything that these witnesses did.

THE COURT: Just to show --

MR. KORSHIN: Just to show that they testified and for no other purpose.

THE COURT: That stipulation will suffice.

MR. KORSHIN: Yes.

MR. WOODFIELD: These individuals testified in the Grand Jury and exercised their Fifth Amendment privilege.

THE COURT: Is that stipulated?

MR. KORSHIN: I don't know that it is relevant. I will stipulate it, but it's not relevant in my view.

MR. WOODFIELD: Your Honor, here are six copies of those transcripts.

THE COURT: Mark them for identification only.

THE CLERK: Six transcripts marked for identification as Government's Exhibits 1, 1-A, 1-B, 1-C, 1-D and 1-E.

(So marked)

MR. KORSHIN: I have five. Who is the sixth?

MR. WOODFIELD: Rose Bernstein on October 29, 1971.

MR. KORSHIN: I will stipulate to that.

THE COURT: Do we need the witness for any further purpose?

MR. WOODFIELD: No, your Honor.

THE COURT: Do you want cross-examination?

MR. KORSHIN: No, your Honor.

MR. WOODFIELD: There is one question. I mentioned -- the subject matter of this Grand Jury investigation, that it was investigating fraud in the FHA and the real estate industry within the Eastern District of New York.

MR. KORSHIN: I stipulate to that.

THE COURT: You are excused. Thank you.

(Witness excused)

MR. WOODFIELD: At this time, your Honor, I would offer these Government Exhibits into evidence.

MR. KORSHIN: I object.

THE COURT: Sustained.

Next witness.

MR. WOODFIELD: The government calls Edward Joseph Goodwin.

E D W A R D J O S E P H G O O D W I N , called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WOODFIELD:

Q By whom are you employed. Mr. Goodwin?

A I am presently employed by Theatrical Service and Supplies, Inc. in Deer Park.

Q And where were you employed prior to your present employment?

A I was an appraiser for the Federal Housing Administration at 175 Fulton Avenue, Hempstead, New York, the Hempstead Insuring Office.

Q What years were you employed with the FHA?

A Between 1964 through April 14, 1972.

Q Could you just briefly explain what the duties are of an appraiser with the FHA?

A My duties as an appraiser were to evaluate the market value of real estate properties which were being offered as collateral for government insured FHA mortgages, to determine what term that mortgage would be -- in other words, for how many years it would run; whether or not it was acceptable to the Federal Housing Administration and what repairs, if any, were required to make it acceptable.

Q Did there come a time when you left the employ of the FHA?

A Yes.

Q When was that?

A I believe it was April 14, 1972.

Q Further, did there come a time when you

entered into an agreement with the United States Government?

A Yes.

Q And when was that?

A About the 14th of January of the same year, 1972.

Q What was that agreement, Mr. Goodwin?

A That I would cooperate with the United States Government in the course of this investigation and disclose to them any and all wrongdoings that I had knowledge of, within the FHA and that I had been guilty of, as well as of others; that I would testify to those wrongdoings; that if I lied in the course of such testimony, I would be guilty of perjury and that I would be permitted to plead guilty to a single count of conspiracy and -- in satisfaction for all wrong -- evidence of wrongdoings that I would disclose and that at the time of the sentencing, the sentencing Judge would be made aware of my cooperation and the extent of my cooperation.

Q Did there come a time, Mr. Goodwin, when you did plead guilty?

A Yes.

THE COURT: Excuse me. Is there a memorandum of this agreement?

MR. WOODFIELD: No.

MR. KORSHIN: We don't even know at this point with whom it was made, if the Court please.

THE COURT: I understand. But the practice subsequent to this was to enter into a letter memorandum in order to insure that there was no dispute about what was agreed to. In the protection of the defendant, I made this inquiry.

MR. WOODFIELD: At that time it wasn't an office policy.

Q Did there come a time, Mr. Goodwin, when you did plead guilty?

A Yes.

Q Do you recall when that was?

A Yes. It was December the 12th, 1973, I believe.

Q Did there come a time pursuant to that plea that you were sentenced, Mr. Goodwin?

A Yes.

Q And when was that?

A In September of 1974.

Q Before what judge was that?

A Judge Travia.

Q What was the sentence that was imposed?

A I was given a sentence of $5,000 fine and

three years probation.

Q Now, Mr. Goodwin, during your years as an appraiser with the FHA, did you do appraisals from applications of various lending institutions?

A Yes.

Q And by what method were these FHA files distributed to the appraisers?

A Typically --

MR. KORSHIN: If the Court please, I must object on the ground that it isn't relevant.

MR. WOODFIELD: Your Honor, if I may --

MR. KORSHIN: There is nothing in these statements which involve appraisals or the method of appraising.

MR. WOODFIELD: Your HOnor, if I may, I believe a short background into Mr. Goodwir and his involvement both with the FHA and with the Bernsteins is relevant and better aids the Court in understanding the tapes when they are played. It's a summary, a very brief background. I don't plan to go into it at any great length.

MR. KORSHIN: The involvement with the Bernsteins has nothing to do with this defendant unless it's brought home to us, unless we were involved in it.

MR. WOODFIELD: YOur Honor, the government submits that the tapes will most definitely bring this home.

THE COURT: Objection overruled.

BY MR. WOODFIELD:

Q The question, Mr. Goodwin, by what method were FHA files distributed to the appraisers?

A Typically, on a random basis.

Q Can you estimate the approximate number of appraisals that you conducted while you were an FHA appraiser?

A Somewhere about 6,000.

Q Did you have occasion to perform appraisals for the FHA from applications originating from Eastern Service Corporation?

A Yes, sir.

Q And what is Eastern Service Corporation?

A Eastern Corporation at the time that I was employed at the Federal Housing Administration was an approved lender, in other words, they could, without further supervision, insure the mortgages with FHA insurance.

Q Directing your attention -- where is Eastern Corporation located, Mr. Goodwin?

A 175 Fulton Avenue, Hempstead, during that period of time. The same location as the offices of the

Federal Housing Administration in Hempstead.

Q Directing your attention to approximately March 10th of 1967. Did you have occasion to meet Harry and Rose Bernstein on that day?

A Yes, sir.

Q And where did this meeting take place?

MR. KORSHIN: I must object.

THE COURT: Give me the date.

MR. KORSHIN: March 10, 1974.

THE COURT: What is the purpose of this?

MR. WOODFIELD: That's the meeting -- the government submits that's the first meeting when Harry and Rose Bernstein established their bribery relationship with Mr. Goodwin and from that date until and including the dates of this indictment, the bribery relationship existed.

MR. KORSHIN: If your Honor please, that evidence is not relevant against this defendant. There is no claim that he participated in that. In any event, he's not being tried for that.

MR. WOODFIELD: Your Honor, the government submits that his efforts, as will be shown on the tape, was an attempt to cover up and thwart the government's investigation into those briberies,

and that is the gist of both counts in the indictment.

THE COURT: Do you have any evidence that this defendant was aware of that relationship between the Bernsteins and Mr. Goodwin?

MR. WOODFIELD: Most definitely. The tapes will clearly indicate that.

MR. KORSHIN: I don't think the tapes indicate that at all.

THE COURT: What part of the tapes? Do you have a transcript?

MR. WOODFIELD: We do.

THE COURT: Show me, if you will, the part of the tape you're going to rely on for this witness.

MR. WOODFIELD: This is a transcript of the conversation that took place on February 9th of 1972, involving Mr. Goodwin, Harry and Rose Bernstein and the defendant Mr. Fayer.

THE COURT: Hasn't all this material been marked?

MR. WOODFIELD: No, your Honor. There are just a couple of transcripts. We have agreed on transcripts except for a few certain areas that he's objecting to. We will hand them out when the tapes

are played.

THE COURT: If you are going to refer to something now, you better mark it so the record will be clear.

MR. WOODFIELD: It's difficult to take phrases and dissect this transcript. It's very important to listen to the entire transcript, the interplay of the individuals, that is of Mr. Bernstein, Mrs. Bernstein and Mr. Fayer and how they complement one another in their statements, so dissecting statements or taking phrases out is not as effective as indicating Mr. Fayer's guilt. But I will take a few phrases. I would offer this subject to connection at this time.

THE COURT: Who was present at this meeting?

MR. WOODFIELD: Mr. Goodwin, Mr. and Mrs. Bernstein, Harry and Rose Bernstein, and the defendant Mr. Fayer.

THE COURT: Any objection?

MR. KORSHIN: Subject to connection -- subject to correction.

THE COURT: All right. Admitted subject to correction.

THE CLERK: Government's Exhibit 2 in evidence.

(So marked)

MR. WOODFIELD: Your Honor, I can give you the transcript -- for instance, Page 1 at the bottom of the first page where Mr. Fayer states, "Rose has mentioned what you had said to her yesterday."

Your Honor, as the government's evidence will show, on the preceding date, that was the first occasion when Mr. Goodwin told Harry and Rose Bernstein that he had discussed the bribes with his attorney. This indicates -- the government submits, your Honor, that this indicates that Mr. Fayer was aware of this conversation which took place.

MR. KORSHIN: Oh no, that doesn't indicate anything of the sort. It merely indicates that Rose Bernstein had told Mr. Fayer something, but it doesn't indicate what was told to him.

THE COURT: What else are you relying on?

MR. GOULD (For the Government): Your Honor, there are several things on the transcript of the 9th, that Mr. Fayer alludes to that Mr. Goodwin never told him about.

THE COURT: Give me some examples.

MR. GOULD: He keeps referring in the

transcript, on Pages 6, 20, 23, 25, 26, 27, 30 and several other places, he expressed his shock at what Mr. Goodwin's attorney had advised him and Mr. Goodwin, you will see from the transcript, never mentions on the transcript until Page 26, a rather oblique reference as to what it was his attorney had told him.

MR. KORSHIN: There is no question -- I thought you were finished.

MR. GOULD: Mr. Goodwin on the 8th, does mention to the Bernsteins what his attorney told him and the Bernsteins react quite vociferously to this and Mr. Fayer states in the transcript that he asked to see Mr. Goodwin. That's why this meeting of the 9th came about.

MR. KORSHIN: But there is still nothing in this transcript which indicates or establishes what Rose Bernstein told Mr. Fayer, and certainly nothing in this tape which would justify testimony going back -- transactions going back to March 1967.

MR. GOULD: I think it's clear from the transcript that he did know of the Bernsteins' guilt. On Page 68, Mr. Goodwin -- Harry Bernstein says something to the effect of, "If you talk, it blows

everything." This is just typical of the types pf phrases that are in this transcript.

THE COURT: I understand that. Why do we have to get into the details of the underlying criminal activities, if any, of the Bernsteins way back to '67? I don't see any point in that.

MR. GOULD: One of the motives, and there are others, but one of the motives of Mr. Fayer, I think, becomes clear from this transcript, to stop Mr. Goodwin from going to the Grand Jury and talking about these --

THE COURT: Isn't there enough in the transcripts to indicate the possibility that the Bernsteins were guilty of something?

MR. WOODFIELD: Most definitely, your Honor.

THE COURT: Then I don't see any reason to go back to details of the '67 conversation. It seems to me that that is cumulative and the objection is sustained at this time subject to the renewal of the offer at a later stage.

MR. GOULD: In Cioffi at Page 16, they talk about how Judge Motley had let in quite a bit of this background information at which this defendant was not present, just to give the jury,

or the trierof the facts in this case, background as to how this person came into the picture, what the picture was like at the time and there are several meetings at which the defendant was not present that Judge Motley let in that the Court of Appeals approved of.

THE COURT: I understand I could let it in, but I'm not going to. This is a non-jury trial. The Court is much more familiar than a jury would be with the possibilities of criminal prosecution and the basis for criminal prosecution.

Under the circumstances it seems to me it would not have sufficient probative force to warrant wasting time with it. At this taping. I may subsequently decide differently.

We have a relatively narrow issue here. Let's keep to it if we can. Sustained.

MR. WOODFIELD: Your Honor, if I may inquire, you sustained objection as to the conversation which took place on March 10th, 1967. Does that ruling include any conversations and subsequent -- the extensiveness of the payments from Mr. Bernstein to Mr. Goodwin --

THE COURT: I have just taken care of the

objection that was made. If you have any other, we will deal with it when it's made.

BY MR. WOODFIELD:

Q Mr. Goodwin, after your meeting with the Bernsteins on March 10th, 1967, thereafter did you have occasion to meet Harry and Rose Bernstein in their office at Eastern Corporation?

A Yes.

Q On more than one occasion?

A Many occasions.

Q Approximately how often did you meet with Harry and Rose Bernstein in Mr. Bernstein's office?

A About twice a month.

Q For what period of time, Mr. Goodwin?

A Between March the 10th, 1967 and through all of 1971.

Q On those occasions did you have an occasion to receive anything from Harry or Rose Bernstein?

A Yes, sir.

Q What was that?

MR. KORSHIN: I must object, if the Court please. This has nothing to do with this defendant.

THE COURT: I will take a very brief statement to indicate that there was a basis for the

Grand Jury inquiry. It was a serious inquiry, if this is established.

MR. KORSHIN: But what must be established, is that the defendant knew that there was a basis for the Grand Jury inquiry. He knew the inquiry was going on, but now the question is, did he know that there was a basis for it?

THE COURT: I'm going to rely upon -- I take it the transcript and other evidence is available for that.

MR. WOODFIELD: Yes, sir, your Honor.

MR. KORSHIN: Then it would be taken subject to proof that the defendant knew.

THE COURT: That the defendant knew that the Bernsteins had a serious possibility of being found guilty of a crime. And that the probabilities were that they at least made that much known to the defendant. That will have to be established.

MR. WOODFIELD: Thank you.

BY MR. WOODFIELD:

Q Mr. Goodwin, approximately how much money did you receive from Harry and Rose Bernstein in this manner?

A Approximately, over the years, $15,000.

Q During 1971, while you were employed at the FHA, were you aware of a federal investigation that was being conducted in the Hempstead office of the FHA.

A Yes, sir.

Q How did you become aware of this investigation?

A I was told about it by Mr. Cronin, the chief underwriter at Hempstead Insurance Office.

(Continued on next page.)

A 203

Q Directing your attention to approximately December 16th of 1971, did you have an occasion to meet with Harry and Rose Bernstein on that date?

A Yes, sir.

THE COURT: Give me the date again, please.

MR. WOODFIELD: Approximately December 16, 1971.

Q Who initiated this meeting, Mr. Goodwin?

A Mr. and Mrs. Bernstein.

Q Were arrangements made to meet?

A Yes, sir.

Q What were those arrangements?

A That I was to meet them on Hilton Avenue, which was around the corner from the Hempstead insurance office of the FHA, it's a street which is opposite Abraham & Straus Department Store.

Q Did you meet Harry and Rose Bernstein on that occasion?

A Yes, sir.

Q Was anyone else present?

A No, sir. Myself, Mr. Bernstein and Rose Shornstein, Mrs. Bernstein.

Q Did you have occasion to have a conversation with Mr. and Mrs. Bernstein on this occasion?

A Yes, sir.

Q Would you please relate that conversation to us?

MR. KORSHIN: I object, if the Court please. That doesn't bind us in any way. We weren't there. It's not admissible against this defendant.

THE COURT: What was the first meeting that this witness had with this defendant?

MR. WOODFIELD: The first and only meeting, your Honor, is the meeting that is transcribed as February 9th, 1972.

THE COURT: Was there any reference in the February 9th meeting to the December 16th meeting?

MR. WOODFIELD: Not to the meeting per se, but to the events that took place at this meeting, and that is at this meeting -- the government submits, your Honor, that at this meeting of December 16th, 1971, Harry and Rose Bernstein told Mr. Goodwin to go -- if he was subpoenaed before the Grand Jury, to take the Fifth Amendment. Also, this was the first occasion when there was conversation concerning payment of attorney's fees for Mr. Goodwin, your Honor, that's -- Mr. Fayer is included in the count in the indictment, I believe -- the it's the indictment

3 Goodwin-

72CR. 589, of aiding and abetting bribery of Mr. Goodwin. One of the things of value offered to Mr. Goodwin were attorneys' fees, and these items are discussed on the tape -- on the meeting of February 9, 1972, and Mr. Fayer was present.

MR. KORSHIN: The tape -- on the tape of the meeting of February 9, 1972, there is talk about attorneys' fees, but there is no reference whatever to a conversation on December 16, 1972, and in fact, the only reference to an earlier conversation, a conversation prior to February 9, 1972, is the statement on Page 1, "Rose has mentioned to me this morning, what you said to her yesterday." But that doesn't prove what was said to him.

MR. GOULD: Your Honor, on several instances here, they don't specifically refer on that meeting of the 19th, "Remember when the Bernsteins told you this," there are obviously some inferences to be drawn and some of these can be drawn by the fact that he knew certain things about Mr. Goodwin that Mr. Goodwin never told him about, including the attorneys' fee offer, including the fact that Mr. Goodwin's attorney had told him several things, and Mr. Goodwin had only told these things to the Bernsteins at

previous meetings, so the inference, I think, is very apparent, and of course, the trier of fact can either draw that inference or choose not to draw it but I think it's certainly admissible, and incidentally, Page 12 is, I think, another area where he mentions that Rose has discussed this thing with him.

On Page 62, there is a reference to the attorney, he says, "When I heard about this," Page 62, talking about what Goodwin's attorney told him. It -- he had to have heard of it from the Bernsteins, that's the only person Goodwin told about it.

So that there are inferences to be drawn. Whether or not ultimately the trier of fact wishes to draw them is another matter, but the government submits it's rather apparent.

MR. KORSHIN: You can't draw the inferences that the government attorneys want drawn. They want to go back to a meeting on December 16, 1971. It's perfectly apparent from this transcript that Mr. Fayer had been told certain things and what he was told appears pretty clearly from this transcript. The transcript does not show that he was told any of the details of any of the conversations

between this witness and the Bernsteins.

MR. WOODFIELD: Your Honor, I submit that this is completely nitpicking. If you will take this information, or if you take this evidence subject to connection, I'm sure when you hear the conversation -- the government when you hear the conversation of the 9th, it all ties in.

THE COURT: Maybe I better hear the conversations then. What is the witness going to tell us about what happened on February 8th? Maybe the meeting of February 16th is cumulative.

MR. WOODFIELD: It sets the stage, your Honor, of this whole proceeding -- if I may, just referring back for a moment, your Honor, then I will answer your question.

On numerous occasions on this 9th tape, Mr. Fayer states how they have had members of the Eastern -- employees of the Easter Corporation go in the Grand Jury, take the Fifth Amendment, many records, everybody sits tight.

Your Honor, that relates back --

THE COURT: What is the February 8th meeting going to show?

MR. WOODFIELD: The government plans to play

that tape, your Honor --

THE COURT: You have a February 8th meeting as well?

MR. WOODFIELD: Not involving Mr. Fayer.

THE COURT: I understand that.

MR. GOULD: A tape, yes.

THE COURT: What's on that tape?

MR. WOODFIELD: That's the occasion when Mr. Goodwin tells Harry and Rose Bernstein that he has discussed his bribery relationship with the Bernsteins with his attorney.

THE COURT: What do the Bernsteins say?

MR. WOODFIELD: "Take the Fifth Amendment. We will get an attorney."

THE COURT: Then it's cumulative of what happened on December 16th. Let's get to the key conversations which I take it are those of February 8th and 9th.

MR. WOODFIELD: That's correct, your Honor.

THE COURT: All right. Sustained.

MR. KORSHIN: I submit --

THE COURT: Sustained.

MR. KORSHIN: The key conversation is only the one --

THE COURT: I sustained your objection.

MR. KORSHIN: But your Honor said something, you said the key conversations were February 8th and 9th.

I submit only February 9th is inadmissible.

THE COURT: I understand that. Your objection to the specific question is sustained.

BY MR. WOODFIELD:

Q Mr. Goodwin, approximately when did you begin to cooperate with the Government?

A About the 14th -- about 10 days after I first met agents of the Federal Bureau of Investigation. The 14th of January, 1972.

Q And thereafter did you have occasion to talk with Harry and Rose Bernstein?

A Yes, sir.

Q And thereafter, after you began to cooperate with the Government, did you have occasion to meet with Harry and Rose Bernstein?

A Yes, sir.

Q And on what occasion did you meet with Harry and Rose Bernstein?

A I spoke to them on the telephone on the 31st of January, 1972, and hI met with them on the following day on the 1st of February, 1972. That was the first time that I met with them.

MR. WOODFIELD: Your Honor, if I may, just a moment. I believe there will be similar objections to this February 1st meeting, and I'm just -- I just want to say if there is any -- if this is merely cumulative of the events that took place on the 1st.

BY MR. WOODFIELD:

Q Did there come a time, Mr. Goodwin, when you again met with Harry and Rose Bernstein after the February 1st meeting?

A Yes, sir.

Q On what date was that?

A The next time I met with them was on February the 8th.

Q Where did that meeting take place?

A Again, I met them on the street in a car about a block and a half away from the Federal Housing Administration office at Hempstead.

Q And on that occasion, was that conversation recorded?

A Yes, sir.

MR. WOODFIELD: If there is no objection, we will play the recording of the 8th immediately.

MR. KORSHIN: There certainly is an objection.

THE COURT: You better mark it first. Do you have a transcript?

MR. WOODFIELD: Yes, your Honor.

THE COURT: Mark the transcript.

MR. KORSHIN: For identification, I take it, sir.

THE COURT: For identification for the moment.

THE CLERK: Government's Exhibit 3 for Identification.

(So marked.)

THE COURT: Do you have the tapes for the 8th and 9th?

MR. WOODFIELD: Yes, your Honor.

THE COURT: Mark them for identification.

Mark the tape of the 8th Government's Exhibit 3A.

THE CLERK: Tape marked Government Exhibit 3A for Identification.

(So marked.)

MR. WOODFIELD: The tape on the 9th, your Honor, is on two reels.

THE COURT: Government's 2A and 2B.

THE CLERK: Tapes marked Government Exhibit 2A and 2B for Identification.

(So marked.)

BY MR. WOODFIELD:

Q Mr. Goodwin, I show you these exhibits and ask

you if these are tape recordings of the conversations that you had with the Bernsteins on February 8th --

MR. KORSHIN: I will concede that they are.

Q With the Bernsteins and Mr. Fayer --

THE COURT: Conceded.

MR. WOODFIELD: I will play the tape, your Honor.

MR. KORSHIN: I object, if the Court please.

The conversation on the 8th with the Bernsteins without Mr. Fayer present is not admissible against Mr. Fayer for any purpose.

THE COURT: Excuse me --

MR. KORSHIN: There is no proof --

THE COURT: I would rather hear the 9th first then.

MR. GOULD: Your Honor, may I read one statement from the 9th tape which I think is typical of the type of inference we are asking you to draw.

Page 12, in the middle Mr. Fayer says, "If anybody" -- "If anybody says they are -- it's going to hurt them. This is basically my feeling. This is why when they -- Rose mentioned this morning, I said, 'Invite Goodwin to sit down because everybody is in the same boat.'"

Now, that boat, your Honor, of course, involves the bribes. It involves exactly what Mr. Goodwin talked to the --

THE COURT: You are going to let me listen to the tape of the 9th, I take it, are you?

MR. GOULD: Yes, your Honor.

THE COURT: All right. Federal Rule 611 in control of the order of proof, I prefer to hear the tape of the 9th in which the defendant actually participated before I rule on the objection before me with respect to the tape of the 8th.

I'm not ruling adversarily, I just prefer to hear it first since I'm going to hear it anyway.

MR. KORSHIN: I want that to show, that the first portion is inaudible.

(Tape played.)

MR. WOODFIELD: Your Honor, the Government will concede that approximately the first five minutes is inaudible. If we may proceed, we will go right to the portion of the tape that is inaudible.

MR. KORSHIN: Approximately five minutes, that is the concession?

MR. WOODFIELD: Yes.

MR. KORSHIN: Yes.

THE COURT: Then go to the audible portion, please.

(Tape played.)

MR. KORSHIN: May we stop for a moment? I cannot hear the tape at all.

THE COURT: It is a very poor reproduction system you have. I'm not going to listen to a poor system.

When is a good system coming over?

MR. WOODFIELD: I don't believe it will make a difference. I have played this numerous times.

The first few pages are bad and then it improves. I don't believe the system is going to make a difference in the quality of the tape.

THE COURT: Are you an expert?

THE AGENT: No, sir, I am not.

THE COURT: What is the defendant's wish?

MR. KORSHIN: If I can sit over there, I'll try to hear it. If I can hear it, I have no objection to it. But I cannot hear it from here.

I have been told --

THE COURT: You can sit wherever you wish but I don't want to strain myself. We will try it for a few minutes.

(Tape played.)

THE COURT: You want me to listen to this tape?

MR. KORSHIN: Not necessarily. There are just certain parts of this transcript that Mr. Fayer says are attributed to him, which he didn't say.

THE COURT: Give me the pages and let's see if we can correct them.

MR. WOODFIELD: If I might. I have found two changes, your Honor, that I think should be made in my playing of the tapes.

Page 6 of the tape. From the bottom, the seventh line up there should be an "F" there, starting "Now, let me say this, and I'm now" -- I believe it's probably a typographical error, the Government submits starting there it is not a continuation of Mr. Goodwin's statement from above but in fact it is the starting of a statement made by Mr. Fayer.

MR. GOULD: It says "G" all the way down in that statement. But it should be Fayer starting to talk.

THE COURT: This is December 9th?

MR. KORSHIN: February 9th.

THE COURT: February 9th.

MR. WOODFIELD: Page 6, your Honor.

MR. GOULD: Starting with the word "Now."

THE COURT: Mine has an "F".

DIRECT EXAMINATION

BY MR. WOODFIELD: (Cont.)

MR. WOODFIELD: Page 65 of the transcript.

MR. KORSHIN: This is not the transcript you gave me.

THE COURT: That's the one that was handed out this morning, wasn't it, by this young lady?

MR. WOODFIELD: Yes, your Honor, I have ten copies of it.

THE COURT: Give copies to counsel.

Mark it corrected on the top so that there be no question about which it is.

MR. WOODFIELD: Page 65, your Honor; the 7th line down, which states:

"This you don't worry about, your income comes in."

That's listed as having been said by Mr. Fayer. It is actually said by Mr. Bernstein. It should be H.B..

Is there any disagreement as to that?

MR. KORSHIN: No.

THE COURT: What does the defendant have to say about that?

MR. KORSHIN: On page 27 right in the middle

the word "deduction" didn't make sense.

THE COURT: You want deduction to read "inaudible"?

MR. KORSHIN: Yes.

THE COURT: If he thinks it's inaudible then we will mark it "inaudible".

Next.

THE WITNESS: On 29 there was a Yes and a no. I don't know who said which.

THE COURT: You want the "no" to come cut?

THE DEFENDANT: We couldn't hear it. It couldn't be yes, no. It doesn't make sense.

MR. WOODFIELD: The trier of the fact after listening to the tape --

THE COURT: I will mark it inaudible for the time being.

MR. WOODFIELD: If I remember correctly, on page 29 the "yes" was in reaction to one person's statement and the "no" to another.

Sometimes it's seriatim and there are more than one person talking.

THE DEFENDANT: 32, fifth line down. "Schlemiel". I don't know what that word means.

THE COURT: Mark it "inaudible".

MR. KORSHIN: Where it says, "The hell with them," Mr. Fayer says he didn't say that.

It's very unlikely that he did. I've never heard him speak that way.

THE COURT: I will put a question mark next to it and unless it turns out to be critical , we will just assume he didn't say it.

MR. KORSHIN: Page 47, this statement is attributed to Mr. Fayer: "The State Department automatically held a license revocation hearing but the State Department, if everyone sits tight, there won't be any evidence."

Mr. Fayer tells me that in listening to his copy of the tape, those were not the words.

THE DEFENDANT:"There won't be any evidence." Again, the tape was bad.

THE COURT: "There won't be any evidence," was inaudible.

THE DEFENDANT: Won't be any evidence. I couldn't quite make out what it was.

THE COURT: Everything else is all right?

THE DEFENDANT:Yes.

THE COURT: I will bracket that as inaudible.

MR. WOODFIELD: Your Honor, I have --

THE COURT: For the time being. We will have to check it if it turns out to be of any importance.

MR. KORSHIN: At the top of page 52, "You need somebody that knows his business, that can really protect you. You know someone who's not going to take an easy way out."

THE COURT: I will put that in in brackets and assume that's the case, subject to later check.

MR. KORSHIN: Down at the bottom of the page, this statement is attributed to Mr. Fayer:

"This is why -- what, when you --you said to me at the outset what really started it, that you were told that they made a naked --"

THE DEFENDANT: Instead of "they made a", it should read that "a naked accusation is sufficient."

THE COURT: At a --

THE DEFENDANT: "A naked accusation."

THE COURT: All right.

We will assume that's the case subject to checking.

MR. KORSHIN: Page 57, the first word on the page is "Shallow." Mr. Fayer says it makes no sense.

THE DEFENDANT: I can't understand that "shallow."

THE COURT: We will mark it inaudible.

THE DEFENDANT:Page 67. Again it's not clear. The rest of the statement ties in, but "I wish the hell that we would had won." 71 right above the last HB where it says, "Hey, that's a hell of a funny story."

That's Goodwin.

THE COURT: Goodwin said that?

THE DEFENDANT:Yes.

THE COURT: We will mark that"G."

MR. KORSHIN: In the middle of the page, "Funny as shit." Mr. Fayer didn't say that.

THE DEFENDANT: Again, it's meaningless, but it's not my language.

THE COURT: Where's this?

MR. WOODFIELD: Approximately two thirds of the way down the page on 72, your Honor.

THE COURT: He said what, anything?

MR. KORSHIN: No.

THE DEFENDANT: That was probably Goodwin who said that. That's his, if you listen to some of his tapes, that's his language.

MR. KORSHIN: 75, right at the top, "Tell him to drop it. In the event you are served with a subpoena then we will see about a top drawer."

THE DEFENDANT: It had to be man or attorney or somebody.

MR. GOULD: Sometimes somebody was cut off by somebody else.

THE COURT: All right.

If he wants to put "attorney," there we will put it in. Put it in in brackets.

MR. KORSHIN: Then "Then your top-drawer man," doesn't make sense. But it doesn't make any sense.

MR. WOODFIELD: I submit that it is that way. Of course, we don't speak as well as we write. We just suggest that you listen to it.

THE COURT: We have it in. If it makes any difference we can check it.

THE DEFENDANT: 77, eight from the bottom.

"Give him the two numbers."

THE COURT: The two numbers?

MR. KORSHIN: Reference thereto telephone numbers.

THE COURT: All right.

MR. KORSHIN: The bottom of page 79, three lines up, the statement is attributed to Mr. Fayer, "I never heard of you."

Mr. Fayer says when he listened to the tape

that was inaudible. He didn't say that.

MR. GOULD: He says he didn't say it or it was inaudible.

THE COURT: I will mark it inaudible subjectto later checking.

MR. KORSHIN: On page 90, the middle of the page, it's attributed to Mr. Fayer, is the statement, "Oh, no, no, no." Mr. Fayer says that was not his voice on the tapes.

THE COURT: Who said it?

THE DEFENDANT: I couldn't make it out.

THE COURT: All right.

We will mark it inaudible.

MR. KORSHIN: Those are the only ones, your Honor.

THE COURT: Since the technicians haven't yet been able to set up the system, I suggest that I read this transcript so that I am in a position to rule on the offer of the February 8th transcript.

Is that acceptable?

MR. KORSHIN: Certainly, sir.

MR. WOODFIELD: Yes, your Honor. Just one further thing. Once we get over that hurdle, we can also, if your Honor wishes, if you agree to introduce the 8th tape, we can go through the 8th tape for any

corrections that might be there.

That's another thing we might do while we wait for the equipment.

THE COURT: I don't want to look at it until I've read this. We will take --

MR. WOODFIELD: I should be able to get an estimate of the time, your Honor, within a few minutes. Maybe counsel would like to go to lunch.

THE COURT: I think it might be appropriate to take lunch. Do you want to go to an early lunch?

We will meet again at 20 to 1:00.

MR. KORSHIN: May we have a little longer than that?

THE COURT: Quarter to?

MR. KORSHIN: One o'clock.

THE COURT: All right. One o'clock.

(Luncheon recess taken.)

A
k p.m.
session

A 224

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
APR 8 1975
TIME A.M.
P.M.

----------x

UNITED STATES OF AMERICA, :

-against- :

ALFRED FAYER, :

Defendant. :

----------x

72 CR 589
75 CR 43

United States Courthouse
Brooklyn, New York

February 19, 1975

B e f o r e:

HONORABLE JACK B. WEINSTEIN,

U.S.D.J.

IRA RUBENSTEIN
Acting Official Court Reporter

8(A)

Appearances:

DAVID G. TRAGER,
United States Attorney
Eastern District of New York

By: GARY WOODFIELD, ESQ.,
and
JAY GOULD, ESQ.,
Assistant U.S. Attorneys.

JACK KORSHIN, ESQ.
Attorney for the Defendant.

- - -

THE COURT: I have read Government's Exhibit 2. I will want to hear portions of it played back for me. In order to get some idea of the tone of the participants at various portions. Based on my reading of the transcript, however, it's quite clear to me that the conversation of February 8th would be admitted.

On the bottome of Page 1, the defendant indicates that Rose, indicating Rose Bernstein, had referred to that conversation. At the bottom of Page 51, the defendant indicates, "The Bernsteins have told me certain things about the expenses."

Which, I take it, at least possibly could refer to conversation of February 8th, based upon what the attorney for the government had said is in that conversation. In addition, the transcript as a whole, indicates that the defendant felt himself charged with the general defense of the Bernsteins and that he was at least as he put himself forward to Goodwin, generally directing that defense which included as its predicate an assumption that none of the witnesses would speak when called by the government.

There are other pertinent references in the exhibit of February 9th, but I think that surfaces as a basis for admissibility.

MR. WOODFIELD: Your Honor, if I may, the government at this time would renew its question to play the tape of the Agent Triorto.

THE COURT: We'll mark the 8th transcript in evidence.

MR. WOODFIELD: It has been done.

THE COURT: No.

THE CLERK: Government's Exhibit 3 marked into evidence.

THE COURT: 3-A is also so marked in evidence.

I don't think I need to hear that whole tape.

MR. WOODFIELD: Your Honor, if I may, for your own information, the tape of the 8th lasts approximately 50 minutes, the tape of 9th, approximately an hour and a half.

THE COURT: Well, do you want to play the 8th first?

MR. WOODFIELD: I would, your Honor.

THE COURT: Do you think we have to play the whole tape?

MR. KORSHIN: I don't think so.

THE COURT: All right, if you want me to listen to it, I will.

MR. WOODFIELD: Thank you.

THE CLERK: Government's Exhibit 3-A marked

in evidence.

(So marked)

MR. WOODFIELD: The portions of the tape the government would request you hear, -- listen to the entire 8th -- as you are probably now aware of the reading, there are portions that just involve ordering meals and that portion certainly could be --

THE COURT: I'll hear whatever counsel wishes me to hear.

MR. WOODFIELD: Thank you, your Honor.

THE COURT: Is this a pair of earphones for me?

(Tapes being played.)

DIRECT EXAMINATION

BY MR. WOODFIELD: (Cont'd.)

Q Mr. Goodwin, when did this meeting take place on February 8th?

A In the afternoon.

THE COURT: I think the record ought to show that the record was extremely clear and that the transcript in every important respect was accurate.

Q Later that evening on February 8th, did you have an occasion to again speak with Harry and Rose Bernstein?

A Yes.

Q What was that conversation?

A I told them that I wasn't able to get in touch with the engineer, which was a code word for lawyer, regarding the water problem, that I would try and get him later in the evening.

Q Approximately what time was this conversation?

A About 8:00 o'clock or so, I believe.

Q What kind of communication was that?

A Telephone.

Q Did you have an occasion to again speak with him that evening on February 8th?

A Yes, they called back after 10:00 o'clock.

Q And what was that conversation?

A And they said, don't try to get in touch with the lawyer, that they would want to see me in the morning. I said there is no way I could see them in the morning, it was impossible. They would get in touch with me the next day and make arrangements to get together.

Q Now, directing your attention to that next day, February 9th, 1972, did you have occasion to meet Harry and Rose on that day?

A Yes, close after business.

Q Where was that, that meeting?

A Again, it was around the corner from the FHA on Hilton Avenue or is it the one that goes down near

Abraham & Straus.

Q Who was present at that meeting?

A In the car was myself, Mr. Bernstein, his wife, Rose Bernstein, Mr. Fayer and the chauffeur.

Q Did you know Mr. Fayer at that time?

A I knew him. Didn't know he was going to be there, I didn't expect to see him.

Q From where did you know Mr. Fayer?

A He had been the attorney at several closings, real estate broker representing Eastern Service Corporation. Strictly business relationship.

Q Have you ever discussed your bribe taking with the Bernsteins with Mr. Fayer?

A With Mr. Fayer, no.

Q Had you spoken to Mr. Fayer recently prior to this meeting?

A I hadn't spoken to him to the best of my knowledge, in a long time-- months at least.

Q Now, what if anything, did you do after you arrived at the Bernstein's car on February 9th?

A Well, first I was surprised to see Mr. Fayer there, they at that point said they wanted to eat, they wanted to go out for dinner and they suggested going to the restaurant, the Maison Pepe. Asked me if I knew where it

was , I said no. They started to describe the location, I ended up following them. Went to the restaurant.

MR. WOODFIELD: Your Honor, at this point I would request playing the 9th tape.

THE COURT: Any objection?

MR. KORSHIN: No. Is it necessary to play it all?

THE COURT: I think we can start in the middle of Page 18. Or any other place you care to begin.

MR. WOODFIELD: Your Honor, there is -- by starting at 18, you left out much of the order of food, however right in the beginning, I believe.

THE COURT: All right. Why don't you direct your technician to play it as you would like it.

The defendant may request any portions that you have of interest played -- to be played.

MR. WOODFIELD: Thank you, your Honor.

THE COURT: I have read the complete transcript. Of Court's Exhibit 2. Government's Exhibit 2.

Where are you going to start? What page?

MR. WOODFIELD: Your Honor, we will start from the beginning.

THE COURT: All right.

(Playing of tape.)

MR. WOODFIELD: At this point, your Honor, we'll skip over to the middle of Page 10. Right now it's in the middle of Page 10. At this point, your Honor, we're going to skip over to the middle of -- Right now it's the top of Page 18.

THE COURT: Excuse me, play that back again, that little piece on the middle of Page 27. Where defendant says, "This is what I --"

MR. KORSHIN: The word is, deduction.

THE COURT: It's not inaudible. The word, deduction crowds out the word inaudible.

Continue. Play that back again beginning with the defendant saying, "I."

The way I read it is the defendant said, "Yes and Mr. Goodwin said, no." That's the way it will read, do you agree?

MR. KORSHIN: I agree.

THE COURT: I'll change the original straining out the words, "inaudible."

(Playing tape)

THE COURT: Repeat that portion "But they get nervous of the defendant." Stop it for a moment. I think the transcript is right. He did say "smagel." It wasn't inaudible. All right, I will correct it.

Let's take a break for a few minutes, very tedious to listen to this intensely. Take a few minutes.

(Recess)

(3:10, back from recess)

(Listening to tapes again)

MR. WOODFIELD: There's a long pause there where it's marked inaudible, but at this point we can skip ahead.

(Continuing on Page 39)

THE COURT: Play that over again, beginning with "State Department automatically held."

Try that again. I didn't hear "There wouldn't be any evidence." I heard something about evidence. "The State Department , if everyone sits tight --" (Slight inaudibility) -- "The evidence."

All right, continue.

MR. KORSHIN: May I just have it how it reads. "State Department, if everyone sits tight."

THE COURT: Excuse me, stop the "nod", is "not" in there.

MR. KORSHIN: I have the sense of it.

THE COURT: Read properly, "I am not," I am going to strike that word, not, which I bracketed in

on the fourth line on Page 52.

Excuse me, stop the recording. Page 53, five lines up reads, "That they made an accusation," and that's proper, I think.

MR. KORSHIN: There is a word "naked" in there, sir.

THE COURT: All right. Play it over again, I didn't catch the 'naked." I thought it said "make a."

MR. KORSHIN: That's a naked accusation."

THE COURT: If you hear it that way, we'll take it. I heard "Make an accusation," but it doesn't matter, the sense is the same.

Proceed.

Play this back again beginning with "Doesn't tell her to run out of town," beginning on Page 66.

(Listening to tapes)

MR. KORSHIN: Can we stop it, Judge Weinstein, for a minute. Can we go back to the part that he said, "Goddam it, on the new projects coming in there is a question in my mind and Mr. Fayer's mind as to whether this transcript is accurate along there."

The, "I thought he knew that wasn't said by Mr. Fayer, I think that was said by Harry Bernstein."

THE COURT: All right, do that.

(Listening to tapes.)

MR. KORSHIN: Maybe, Goodwin.

THE COURT: All right. "I thought he knew as--" Goodwin.

(Listening to tapes.)

THE COURT: There's a new tape at the top of page 90.

MR. WOODFIELD: Yes, your Honor.

THE COURT: Who is this lady?

MR. FAYER: My wife. Any objection, Judge?

THE COURT: I just wanted to know who she is. Take a breather while they get this thing set up.

(A short recess was taken.)

(After recess.)

THE COURT: All right, please continue.

(Listening to tapes.)

MR. WOODFIELD: Your Honor, at this point the Government will end the tape here.

THE COURT: Anything more you wish?

MR. KORSHIN: No.

THE COURT: I listened to the middle of page ninety-six.

Q Mr. Goodwin, I show you what is marked Government

Exhibit number 4 for identification and ask you if you can identify this?

A Yes.

Q And what is that?

A That's the business card that Mr. Fayer gave me at the time of this dinner meeting when he wrote his telephone numbers on it.

MR. W OODFIELD: May I have it, please.

Your Honor, I'd offer this into evidence.

THE COURT: Any objection?

MR. KORSHIN: No objection.

THE COURT: Admitted.

THE CLERK: Government Exhibit 4 marked in evidence.

BY MR. WOODFIELD:

Q Mr. Goodwin, did there come a time after February 9, that you had any further contact with Mary Rose Bernstein?

A Yes.

Q When was that?

A Two days later on the 12th.

Q What was that communication?

A Mr. Bernstein called.

MR. GORSHIN: I must object to this conversation

unless it was in the presence of Mr. Fayer. Unless Mr. Fayer was involved in it in some way.

MR. WOODFIELD: Your Honor, if you'll listen to the conversation you'll see he is involved. The thrust of this conversation was that Mr. Bernstein called Mr. Goodwin and told him to call Mr. Fayer and although we haven't brought it to your attention yet there is a short, approximately a minute tape phone call of Mr. Goodwin to Mr. Fayer which we --

THE COURT: Which call? This call?

MR. WOODFIELD: After

MR. KORSHIN: That's all the conversation is. I don't believe that they simply told him to call Mr. Fayer. I don't object if that --

THE COURT: Continue. The objection has been withdrawn.

BY MR. WOODFIELD:

Q Mr. Goodwin, what was the conversation you had with Mr. Bernstein on that evening?

A Told me to call Mr.Fayer right away.

Q And what did youdo?

A This was during the day, wasn't in the evening.

Q What did you do later on that day?

A I called Mr. Fayer.

MR. WOODFIELD: May I have these marked, please

THE COURT: Are there any objections to marking this tape in evidence?

MR. KORSHIN: No, sir.

THE COURT: Mark them in evidence and mark the transcript Government 5 and the tape Government 5A.

THE CLERK: Transcript is marked Government Exhibit 5 in evidence and the tape is Government Exhibit 6.

THE COURT: 5A.

THE CLERK: 5A.

THE COURT: Tape will be 5A.

BY MR. WOODFIELD:

Q Mr. Goodwin, that subsequent phone call to Mr. Fayer, was that phone call recorded?

A Yes, sir.

MR. WOODFIELD: May we play that at this time, your Honor.

THE COURT: You may. Go ahead.

(Listening to tape.)

THE WITNESS: I think that's on the wrong side.

MR. KORSHIN: We don't question the accuracy of

this transcript.

THE COURT: I'd like to hear the inclinations. Don't fiddle with it. I'll assume Government Exhibit 5 is correct. If they can correct their equipment before the session is over tonight, I'll hear it.

Otherwise, we'll proceed without it.

BY MR. WOODFIELD:

Q Mr. Goodwin, I again show you Government 4 in evidence and ask you to look at the reverse side ofthat card.

A Yes.

Q Could you please tell us what's written on that card?

A Name, Jack Korshin. It's in my handwriting, Mineola.

Q When did you place that on the card?

A At the time that I had this conversation over the phone with Mr.Fayer.

MR. WOODFIELD: Thank you, no further questions, your Honor.

MR. KORSHIN: How late does your Honor plan to sit?

THE COURT: All right. The technicians have straightened out the tape. Let's hear 5A.

MR. WOODFIELD: Nothing further with this witness, your Honor.

THE COURT: Well, did you ever employ Mr. Korshin?

THE WITNESS: No, sir.

MR. WOODFIELD: Excuse me, your Honor.

CONTINUED EXAMINATION

BY MR. WOODFIELD:

Q Mr. Goodwin, did there come a time after this February 12, 1972, meeting that you testified in the Grand Jury?

A Excuse me, sir?

Q Mr.Goodwin, did there come a time after the phone conversation as you just heard, dated February 12, 1972, that you testified in the Grand Jury?

A Oh, yes.

Q Do you recall approximately when that was?

A A few days later?

Q Did you have an occasion to testify on more than one occasion in the Grand Jury?

A Yes, sir, numerous occasions.

MR. WOODFIELD: Thank you.

I have no further questions.

MR. KORSHIN: If the Court please, I have not been furnished with the Grand Jury minutes with

respect to the last indictment. The testimony of this witness. It's been promised me and I never got it.

MR. WOODFIELD: Nor have I, your Honor. Numerous requests for the minutes have been made and I haven't received them.

THE COURT: Where is the reporter?

MR. WOODFIELD: Mr. Krees guaranteed they'd have the minutes for me.

THE COURT: Where is Mr. Krees?

MR. WOODFIELD: I don't know.

THE COURT: Get him here right away. I'll wait for him. I want him in the courtroom right now. We'll take a recess until we get him.

MR. WOODFIELD: Your Honor, I think I might be able to get my hands on the minutes. Will that suffic

THE COURT: Well, either the minutes or I want the reporter here forthwith.

Found the minutes?

MR. KORSHIN: I have just been given a copy.

May I have a few minutes to read them over?

THE COURT: Okay.

MR. WOODFIELD: Mark this your Honor as 3500 material? Of course, all 3500 material was turned ove

weeks in advance to Mr.Korshin. This we didn't receive until today.

THE COURT: Mark it for identification as Government Exhibit 6, marked for identification. Is that going to be your case?

MR. KORSHIN: Yes, your Honor. Except for one further matter, if I may.

Approximately two weeks ago a subpoena was served upon a Roger Fred at Eastern Service Corporation for all books and records relating to payments by Eastern Service Corporation to Mr.Fayer. This subpoena, your Honor, was going along the lines of the Government's -- one of the Government's -- arguments that Mr. Fayer had an economic motive in the advice that he gave at this meeting and it's learned that Mr. Fayer is; got 1% commission on every closing that Eastern had; not a commission, a fee.

MR. WOODFIELD: See. Your Honor, this subpoena was to attempt to determine the total amount of this money.

THE COURT: Well, is that conceded? He got a fee?

MR. KORSHIN: Of course he got fees, no question about it.

THE COURT: That's right. There is no question on the record he was representing Eastern and getting a great deal of business.

r2 MR. WOODFIELD: We hope to show the extent of the economic interest.

THE COURT: I don't think it makes a difference. You couldn't get the documents, I take it?

MR. WOODFIELD: Couldn't get the documents in time and Mr. Frend, when I called yesterday even though the subpoena was served on him he is on a vaction in to Florida. He appeared to be the only one that had knowledge of this.

THE COURT: I take it you are not going to call Mr. Korshin with respect to any conversation that he had with the defendant?

MR. KORSHIN: We have a stipulation as to that.

THE COURT: What is the stipulation?

MR. KORSHIN: It was written out this morning.

MR. WOODFIELD: We agreed upon a stipulation.

THE COURT: Let me have it. Mark it in evidence.

MR. WOODFIELD: I don't know whether the Government intends to offer at this time it in this case.

THE COURT: I see, all right.

CROSS-EXAMINATION

BY MR. KORSHAK:

Q Mr. Goodwin, you went to the meeting on February 9, 1972. You testified that you did not expect to see Mr. Fayer there; is that right?

A That's correct.

Q Did you ask any questions when you saw him there as to why he was there?

A No, sir.

I accepted his presence since he was with Mr. and Mrs. Bernstein.

Q No one told you the reason why he was there?

A Not that I can recall, sir.

Q When you went to that meeting, had you been served with any subpoena to appear before a Grand Jury?

A No, sir.

Q You told the Bernsteins, did you not, on February 8, that you had been interviewed by the FBI?

A Yes, sir.

Q And had refused to make any statement to them; is that right?

A That's true, sir.

Q You didn't tell them that you were in any way involved in addition to the visit from the FBI?

A I'm sorry, sir, I can't hear you.

Q You didn't tell them in any way in addition that you were --

A Involved? In what manner?

Q Involved in the investigation? Did you tell them that any one else had spoken to you? That any one else had asked you for a statement other than those FBI agents?

A No, sir.

Q Did you at any time tell Mr. Fayer that any one had asked you for any statement other than the FBI agents?

A No, sir.

MR. KORSHIN: I have no further questions.

THE COURT: Any redirect?

MR. WOODFIELD: No, your Honor.

THE COURT: Are you resting?

MR. WOODFIELD: Yes, the Government rests.

MR. KORSHIN: Excuse me for a minute. I do have some questions, if I may.

CROSS-EXAMINATION CONTINUING

BY MR. KORSHIN:

Q When you went to the meeting on February 9, what instructions had you received from the FBI people? I take it it was the FBI people who put the sound equipment on you?

A Yes, sir. The equipment was a battery recorder and transmitte

Q What i structions had you received from them?

A The meeting was unexpected and the only instructions they had was to go there and to record it. See what they had to say.

Q Were you told to steer the conversation into any particular channels?

A No, sir.

Q How about the meeting of February 8. Were you told to steer that conversation into any particular channel?

A I would have to look at the transcript. Again, sir, if I may.

MR. KORSHIN: We have the transcript here

THE WITNESS: Fine

Just to refresh my recollection.

THE WITNESS: Yes, sir. I can remember it now. I was instructed to tell them that I had been to my attorney and what had transpired and to state to them again that we wanted to know all the details about receiving monies from him.

BY MR. KORSHIN:

Q By that time, the fact of the matter is you had been in communication with the U.S. Attorney, hadn't you?

A I had been in communication with the U.S. Attorney. My attorney's presence on the 14th of January.

Q When did you make this arrangement with the U.S. Attorney to which you testified this morning?

A At the time I was in my attorney's office

Q January 14th?

A Yes, sir.

Q You did not tell the Bernsteins that you had made any such arrangements, had you?

A No, sir, I did not.

Q You didn't tell them you had ever seen the U.S. Attorney, did you?

A No, sir, I did not.

Q You didn't tell that to Mr. Fayer, either?

A No, sir, I did not.

MR. KORSHIN: I have no further questions.

MR. WOODFIELD: Nothing further.

THE COURT: All right.

That will be all.

MR. WOODFIELD: Government rests, your Honor.

THE COURT: You can leave now or stay in the audience as you prefer.

MR. KORSHIN: I have motions if the Court pleases.

There are two indictments here, if the Court

pleases which have been consolidated for trial. 72-CR-589 is an indictment which supersedes Count 149 in Indictment 72-CR-349. I believe that the United States Attorney will concede that there was no presentation of any evidence to the Grand Jury when the Grand Jury found 72-CR-59.

MR. WOODFIELD: Most certainly won't make that --

MR. KORSHIN: Well, in that case we have that somewhere --

MR. WOODFIELD: Excuse me, maybe I misinterpreted you. You mean additional evidence from that first number you gave that I don't recall to the second number of the 589.

MR. KORSHIN: That's right. No additional evidence

MR. WOODFIELD: That I believe is accurate, yes.

MR. KORSHIN: Yes.

Now, I submit to your Honor that an indictment may be amended or superseded without the presentation of additional evidence only in the or superseding as to correct a minor error not if it goes to a matter of substance. And number 72-CR-589 is substantially different in substance from the original indictment number 72-CR-349.

I can take a moment to find my notes and I will

elaborate on it.

THE COURT: What count number is that on 349?

MR. KORSHIN: Count number 149.

THE COURT: Was this the same Grand Jury?

MR. WOODFIELD: Yes, your Honor.

r3 MR. KORSHIN: I refer your Honor to Russell, again U.S. 369, U.S. 749 and U.S. against Fischetti.

THE COURT: I usually try to read those cases.

MR. KORSHIN: Part.

THE COURT: I don't know those cases. What cases are you going to rely on?

MR. KORSHIN: I'm giving them to you now, your Honor.

THE COURT: Can you give me a list so I can read them. Normally, I read those things in advance because I get briefs.

MR. KORSHIN: U.S. against Fischetti, 450 F.2d 34.

THE COURT: Just give me the --

MR. KORSIN: Restle, 3S 749.

THE COURT: Those are the two cases?

MR. KORSHIN: Two cases hold if and amendment goes to the essential elements of a crime, it is a substantial change and it cannot be made except by resubmission to the Grand Jury.

THE COURT: Are you relying on any other cases in your argument?

MR. KORSHIN: No, not at the moment.

THE COURT: Proceed, please.

MR. KORSHIN: Now, the original indictment charged the crime of influencing a public official "To collude him and to allow and to make opportunity for a fraud on the United States."

The original indictment charged the defendant with knowingly and willfully offering services of value, etc.

THE COURT: May I see Count 149 so I can have the document before me.

MR. KORSHIN: Now the superseding indictment charges a wholly different, wholly different crime, not influencing a public official, but influencing a witness. I withdraw that, it was influencing a public official but it charged the defendant with directly and corruptly having officers.

Now, directly and corruptly having offered to provide something very definitely from knowingly and willfully to provide something. That I submit constitutes a substantial change in the indictment. There was missing from the original indictment the allegation of specific intent.

THE COURT: You mean corrupt intent.

MR. KORSHIN: Corrupt intent.

THE COURT: If you'll excuse me, I'll read those two cases which you have just cited to me orally. Any particular pages you are referring to?

MR. KORSHIN: I didn't note the page. It's the Sassete case which has the quotation that I read to your Honor.

THE COURT: Russell deals with the question whether the indictment must identify the subject which was under inquiry by the legislative inquiry and the Court says on page 752 of 369, U.S. that they decided only on that ground and reaches no other question.

MR. KORSHIN: Will your Honor look at the Fischetti case.

THE COURT: Russell, I don't think that bears on this unless you can find it. I'm giving you the case. Perhaps you can show it to me but the holding seems to be entirely different area.

While you're looking at that you might consider if you will Rule 12B2 of the Federal rules of Criminal Procedure with respect to the timeliness of your motion.

MR. KORSHIN: I think a motion of this kind can

be made at any time.

THE COURT: Well, I just suggest you might look at the rule.

MR. KORSHIN: I don't have the rule here.

THE COURT: My law clerk will give you my copy. May I see the minutes of the Grand Jury with respect to 72-CR-349 and 72-CR-589.

What happened? The witnesses testified in 72-CR-349 was handed down.

MR. WOODFIELD: Yes, your Honor. Then, there I don't believe there was additional evidence but there was another vote. The superseding indictment was placed before the Grand Jury.

THE COURT: 73-349.

MR. WOODFIELD: Based on the evidence before them.

THE COURT: Fischetti case with the change was not voted by the Grand Jury. This was a change that was made by the Court itself.

MR. KORSHIN: I submit it doesn't make any difference whether the Court made the change or the Grand Jury made the change. If there was no additional evidence submitted, they couldn't correct the defect in the indictment.

THE COURT: Do you agree with my interpretation

of the Fischetti case.

MR. KORSHIN: Yes. The Court made the change.

THE COURT: Motion is denied on the ground this matter was before the Grand Jury and the Grand Jury had evidence to support it. And it was warranted in voting the indictment.

Additionally, the motion is untimely.

MR. KORSHIN: Now, I further move to dismiss Count 72-CR-589 on the ground that the evidence has not established that it was this defendant who offered private employment to Goodwin or who offered the services of an attorney to represent him.

THE COURT: Denied. I think he could be held to be an aider and abetter on both those points in view of his conversation on the two days.

MR. KORSHIN: Now, I move to dismiss the second count; that's 75-CR-343 on the ground there has not been proved that Goodwin was a witness at that time at that further grounds there has not been any proof that Fayer knew that he was a witness and both are required.

THE COURT: Have any authority for that?

MR. KORSHIN: Yes, sir.

THE COURT: If you give me the citations, I'll ask my clerk to --

MR. WOODFIELD: Here are the cases, Tenth Circuit recent case which held just as your H onor has held here. No new evidence actually needed to be presented.

THE COURT: Give me the case.

MR. WOODFIELD: I can give you that. United States versus Cooper, 464 F.2d 648, 10th Circuit 1972. Basically, it held there wasno new evidence before the Grand Jury on superseding indictment that was --

MR. KORSHIN: I have a number of cases on this motion; Walker versus the United States, 93 F.2d 792. I have a photocopy of the case

THE COURT: Thank you. That's very helpful and I appreciate it.

MR. KORSHIN: I have others. I have Falk against the United States, 370 F.2d 472 and I have a photocopy of that if your Honor cares to look at it.

While your Honor is looking at those I'd like to look at some others to see if they're relevant to this point. I don't quite remember.

THE COURT: Would you state again your specific point here, please: Because I'm not sure I followed you.

MR. KORSHIN: Specifically, there is no evidence

that Goodwin was a witness or a prospective witness and there is further, no evidence even if he was a witness or a prospective witness there was no evidence that Mr. Fayer knew this. All that Mr. Fayer knew as disclosed by the evidence that he had been interviewed by the FBI. It did not follow that he was going to be a witness.

THE COURT: Well, is it enough under your submission that he's going to be a prospective witness.

MR. KORSHIN: No question about it. If he knows he's going to be a prospective witness, but a prospective witness doesn't mean a possible witness There is a difference between a possible witness and a prospective witness.

(Continued on next page.)

THE COURT: I think the evidence here shows he was a prospective witness within the knowledge of the defendant.

The whole conversation on February 9, indicates that a new attorney would be needed.

MR. KORSHIN: If he became a witness.

THE COURT: When it was likely that he would have to go before the Grand Jury

MR. KORSHIN: If he became a witness.

THE COURT: Then, on the 12th, the fact he recommended the attorney means by that time he knew it.

MR. KORSHIN: I submit your Honor that doesn't indicate that he knew that Goodwin was going to become a witness.

THE COURT: In addition, there is a whole series of statements about the people related to this who were called and refused to testify. Had the Bernsteins been called before this?

MR. KORSHIN: Yes, they had been.

THE COURT: I take it from reading the conversation they had been called and under his advice refused to testify.

MR. KORSHIN: Not under his advice.

THE COURT: Whatever the advice was.

MR. KORSHIN: That doesn't establish that Goodwin that Fayer knew that Goodwin was going to be a witness or prospective witness. It establishes only a possibility Goodwin might have been a witness.

THE COURT: I think the conversations indicated that everybody assumed Goodwin would be a witness and he was being so treated.

That's why the Bernsteins panicked on the 8th of February.

MR. KORSHIN: That's why the Bernsteins panicked. No evidence that Fayer panicked or Fayer knew what had been the conversation between the Goodwin and the Bernsteins on FFbruary 8th. There is only something on this tape which says that the Bernsteins told him something about that conversation. There is no evidence that they knew the whole conversation.

THE COURT: I can only, I think only any reasonable person could detect that from the tape of the 9th that the reason that Fayer was there was that the Bernsteins and he believed that Goodwin would be called and they wanted to firm him up so that he didn't talk Assuming that Walker and Falk and it seems to me are the facts the motion must be denied.

MR. KORSHIN: In that case, if the Court pleases, may I have until tomorrow morning to decide whether

I wish to put Mr. Fayer on the stand?

THE COURT: You may, of course.

I have the transcript.

MR. WOODFIELD: Your Honor, could we know for our own schedule will there be any further witnesses other than Mr. Fayer, if you decide?

MR. KORSHIN: No, no other witnesses.

THE COURT: Is 10:30 convenient for you?

MR. KORSHIN: Very good.

THE COURT: Convenient for the Government?

MR. WOODFIELD: Certainly.

THE COURT: Can you get here at 10:30?

MR. FAYER: Yes, sir.

THE COURT: All right, let's make it 10:30. Thank you very much, gentlemen.

Madam, good night.

* * *

THE COURT: Good morning, everybody.

MR. WOODFIELD: Your Honor, if I may, one matter first. I believe either you or your clerk, I believe your clerk contacted Mr. De Petris about possibly obtaining the charge of Judge Mod from the Southern District. We communicated with the assistant that handled that case there and their transcript is in their closed files in storage in Bayonne, New Jersey.

It takes approximately 10 days to get it and the only thing is you might consider having your clerk contact the judge's clerk. They may have a copy of it. We are not able to obtain it.

THE COURT: It is not necessary.

MR. WOODFIELD: Thank you.

MR. KORSHIN: I'll call the defendant, if the Court pleases.

A L F R E D F A Y E R, being duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. KORSHIN:

Q Mr. Fayer, you're a member of the bar of the State of New York, are you not?

A I am.

Q When were you at admitted to the bar?

A June 1942.

Q And have you practiced your profession continuously since that date?

A No, since 1946.

Q Where were you between 1942 and 1946?

A In the Navy.

Q Mr. Fayer, Eastern Service Corporation is your client or was your client?

A Yes.

Q And Rose and Harry Bernstein were clients of yours?

A Yes.

Q Now, you have a copy of the transcript of the conversation between Mr. Goodwin, the Bernsteins and yourself on February 9, 1972, do you not?

A I do.

Q At page 1 of that transcript appears this statement made by you.

THE COURT: Page 10.

MR. KORSHIN: Page 1.

Q "Rose has mentioned to me this morning, uh, what you had said to her yesterday."

Rose Bernstein is talking to you on the morning of February 9, 1972, with reference to a conversation she had had with Mr. Goodwin, the previous day?

A She did.

Q What did she tell you, Mr. Fayer?

A She told me that she had met with Mr. Goodwin. That Goodwin was an FHA appraiser and he had been a long time friend of theirs. That he had been interviewed by two FBI men and that he had refused to say anything to the FBI men. They had advised him that he was a possible defendant in the FHA investigation that was going on.

She said that Mr. Goodwin told her he had consulted with an attorney who was a friend of his and that attorney and he had discussed possibly cooperating with the United States Government.

Q By "he" in that sentence you mean Goodwin?

A Goodwin.

Q Yes?

A Discussed cooperating with the Government that Goodwin was not sure what he wanted to do. Goodwin wanted some advice and would I be willing to sit down and meet with him. I said, well, I can recommend an attorney. Rosé Bernstein said that Goodwin did not have too much money and that at that point Goodwin didn't feel that he really needed an attorney. He just wanted some advice. I said, well, you may need an attorney and she said, that if it came to that point he was an old friend of theirs they would make

arrangements with him to get whatever the attorney's fee might be because they had done the same thing for him with his, I think it was his step-son in Florida. They had worked something out for paying for an attorney for him.

Q Was this in substance the entire conversation at that time, Mr. Fayer, to the best of your present recollection?

A I said, I told them come up and see me at the office. She said, no, he didn't want to speak to me at the office because it was in the same building as the FHA and he didn't want to be seen around.

Q Well, were you subsequently informed that an appointment had been made?

A Yes.

Q Was it the same day?

A Appointment was made the same day. They wanted to know if I was free for dinner.

Q Who wanted to know?

A Rose Bernstein wanted to know if I was free for dinner at that time Goodwin would meet with me.

Q Now, had you ever met Mr. Goodwin before that date?

A Not to my recollection.

Q Mr. Fayer, when you went to this meeting, this

dinner meeting, did you regard yourself as having gone in the capacity as a lawyer?

A I did.

Q Did you regard yourself as being there for the purposes of giving legal advice to Goodwin?

A That was my purpose there.

Q Well, Mr. Fayer, there is no question is there but that you were also concerned with the Bernsteins and with Eastern Service Corporation?

A No question about it.

Q Mr. Fayer, what was, at the time you went to this meeting, did you believe the Bernsteins and Eastern Service were guilty of anything?

A I did not.

Q Did you believe Mr. Goodwin was guilty of something?

A I thought so.

Q On what did you base that belief?

A Well, the information that was given to me that Mr. Goodwin was considering cooperating. If the man was considering cooperating, obviously he had been doing something.

Q Was it your opinion and belief at that time that he had been doing something with the Bernsteins?

A No. It was not. He was supposedly a friend of theirs.

Q Mr. Fayer, please turn to page 12 of the transcript of that taped dinner meeting. You see towards the middle of the page there you said, "This is why when they, Rose mentioned this this morning, I said, invite Goodwin to sit down, because everybody is in the same boat."

What invitation did you extend?

A Well, I wasn't going to be charging a fee for it, so as a matter of having, sit down, I'll discuss the matter with him. I certainly was not going to represent him because there would have been a conflict and it was a matter of having him sit down with me.

Q Well, were you soliciting Goodwin to talk to you?

A No, sir.

Q Looking at page 21 of this transcript you see there towards the middle of the page, you made this statement, "Not possible, you're in a different stage, you're in a stage now where you refuse to testify."

What were the "stages" to which you were referring in that statement of yourself?

A Well, the first question of it, "not possible, you're in a different stage," I had been told that Goodwin

had refused to speak to the FBI agent. That as a matter of fact he had been advised, I said before he was a potential defendant and he was in that stage at that time. But he was, had been, interviewed by the FBI agent and refused to say anything.

Q What about your "you're in a stage now where you refuse to testify"?

A Well, if subsequently he comes into or he is subpoened to appear before the grand jury, then if he refuses to testify, then it comes to,iit comes to that stage. That's a different stage.

Q Well, Mr. Fayer, was it your intention to advise him if he was called before the grand jury not to testify before the grand jury?

A No, sir. All through this I don't know how many times I said in here, if he's called get a good lawyer. Get a lawyer.

Q Were you, was it your purpose only to advise him not to talk to the FBI representatives until he was subpoened and got a lawyer?

A Until that time.

Q Mr. Fayer, please, tell me this. If you believe that the Bernsteins were not guilty of anything what was your concern about Goodwin talking? What was your concern

for the Bernsteins?

Q My concern was a two-fold concern: In the first place, I was there to advise Goodwin and I certainly felt if he had merely been interviewed by the FBI, he shouldn't make any statements. As far as the Bernsteins are concerned, I've known and read of far too many situations where someone is innocent, is dragged in because someone makes a deal or says something. Then, he starts to drag everybody in and my feeling was that who knows who he might drag in whether they're guilty or not.

Q Turn please to page 25 of the transcript.

A Yes.

Q You see at the top of that page you said, "We have counsel, counsel for, we have counsel for not kidding ourselves, for Schiller, Fuy, for Florence Behar. All of them. Everyone of them."

Who were those people?

A Either employees or former employees of Eastern.

Q And was Eastern defraying their legal expenses?

A Yes.

Q Do you know why?

A Well, they were employees. This was part of or they were involved in a situation where they, the problem arose out of their employment or through their employment.

Even the former employees were in that same position.

Q Please, turn to page 40 at the bottom of page 40, you said, "Look at this as a business man, and the law is a business."

What did you mean by that statement, Mr. Fayer? The law is a profession, isn't it?

A The law is a learned profession but you have to earn a living out of it and you have to be paid a fee and in that respect, the law is a business. You have to be paid for your services.

Q What was your purpose in making that statement, Mr. Fayer?

A The, it had, I had been originally told and it had developed in here that Goodwin had consulted with his friend, an attorney. It was a very fast, quick consultation without a fee. My feeling is that you're always better even if you use a friend to hire him and pay a fee and he'll do the job.

Q And was that what you were attempting to convey to Mr. Goodwin?

A Yes. The man has to be paid for his work.

Q Mr. Fayer, turn to page 42 of the transcript.

A Yes.

Q You said toward the middle of the page, "I'll

give you the best professional advice I can. Why, because I can give it because I am being paid."

Who was paying you, Mr. Fayer? What did that --

A I wasn't, this is, I wasn't being paid here. This is a, it's an illustration that when I'm being paid, I work for a client. I will do a job. If you're doing something on a friendly basis, of course, you're going to do the best you can for your friend. There is no question about it. There's also the question of how much time you can afford to spend on it and this is why I said right after that, when you start to do it for a friend, I didn't realize this is the problem.

Q Mr. Fayer, did Eastern Service Corporation or the Bernsteins pay you in any way with your meeting with Mr. Goodwin?

A They did not.

Q Did you receive any compensation from anyone?

A For this meeting?

Q For that meeting.

A No.

Q Please turn to page 43. You see at the top of the page, you said, "I, the reason I was shocked, really shocked, I talked to the United States Attorney and I --" and the rest was inaudible.

What were you "shocked" about, Mr. Fayer?

A I was "shocked" in general. An attorney could sit down with a man for a couple of minutes and say, well, we'll see about cooperating. My feeling was that if the attorney is representing a client he should sit down with the United States Attorney and see what kind of a deal he can work out. Work out the best possible deal before he expects his man to speak.

(Continued next page.)

R:GA
1R2 AM

Q Well, the evidence has shown that at the time of this meeting, Mr. Goodwin had already worked out an arrangement, or an agreement, with the United States Attorney. Were you aware of it?

A I was not aware of that. I believe Goodwin, in the tapes, when he was asked the question, said that he denied having, or never said he had not worked anything else. All he had done, spoken to them, and he had said nothing.

Q Now, turn to page 47, please.

See in the middle of the page there, you said in the middle of the paragraph, "Now, I know this, there are several mortgage companies involved you were asked about."

How did you know that?

A This is when I was told by Rose Bernstein that. This is why I believe Goodwin, as I said originally, I had the feeling that because Goodwin was cooperating, he had something and he had done something. Whoever mortgage companies might have been involved.

Q Not Eastern Service?

A Not Eastern Service.

Q Look at page 51, please.

Do you see at the bottom of page 51, you made a statement saying that, "The Bernstein's have told me certain things about the expenses."

What had the Bernstein's told you, and when?

A The morning of my -- The morning of this meeting is when Rose Bernstein had said that if Goodwin needed an attorney, and the fact is, he couldn't afford it, they would certainly go along and help him out. I think, as I said before, he had, they had done this with his stepson, also, some years before.

Q What were you informed was the relationship between the Bernstein's and Mr. Goodwin?

A I was informed they had been friends for a number of years. They had known each other and they were friends.

Q Look, please, at the bottom of page 57. You see you made the statement there, "It's a hard thing to do, Ed. It's difficult, I said, to you, and I tell you now, I give you my word, as I said to them, something or things may come out, things may appear in some matter, but I tell you now, that you are not going to be hurt, really hurt, by this. Hurt in the sense of being convicted, or anything of that sort."

Were you telling Mr. Goodwin he was not going to be hurt, and not going to be convicted?

A No. This is, if you listen to the tapes, this is part of the preceding paragraph. This is part of the conversation I had with the Bernstein's. I told him of the conversation. I had gone over their house. Mrs. Bernstein had been very upset. I tried to calm her down because this was an investigation that

was going on. I told them that my feeling was that I didn't think they would be convicted. They said they had never paid a bribe to anyone.

Q When you say here, "You're not going to be hurt, hurt in the sense of being convicted of anything." You were relating what? You had told the Bernsteins?

A Yes.

Q Now, look at page 58. You see, you made a statement there, "I didn't even bill you for that advice."

A That's right.

Q To whom did you address that statement?

A The Bernsteins.

Q What advice were you referring to?

A This is all part of that. This whole conversation on page 58, where I was relating what I had told the Bernsteins, and I never billed them for that advice or visit.

Q Mr. Fayer, did you ever charge the Bernsteins for anything that you did in connnection with this problem?

A With Goodwin?

Q The whole problem of theirs. The FHA problem, the investigation, the indictment, the trial, and so on. Did you ever charge them?

A Yes. I charged Eastern Service Corporation.

Q Yes?

A Yes, sir.

Q How much in total, do you remember?

A I would say between 5,000 and maybe $7500. But this was, bear in mind, there were a number of attorneys involved. Judge Riskin, Brodsky, Boitel, when they needed information, in connection with that, I had met with the various attorneys on a number of occasions, and this was --

Q This is what you charged?

A This is what I charged them. This was, oh, this was long after this.

Q At the time of this conversation with Mr. Goodwin on February 9, 1972, had you been paid anything by Eastern Service?

A I had not.

Q In connection with this matter?

A No.

Q Had you submitted any bill?

A No.

Q Did you at that time expect to submit any bill for anything that you had done up to that point?

A Yes. For the time I had spent there.

Q Including Goodwin?

A Not including Goodwin, because I told them I wasn't going to charge for this.

Q Turn, please, to page 62. You see the statement there that you made, one-third of the way down on the page, "See, this is why when I heard this thing, I was so shocked, because last Thursday --" You were cut off. What were you shocked about?

A Well, I was shocked about the attorney. This quickly advising somebody to cooperate, without even trying to work out a deal or something.

Q That was the same thing that you referred to before earlier?

A Yes.

Q Please turn to page 91. About two-thirds of the way down you made this statement, "See, if any subpoenaes are served, get an attorney and a good one. Believe me, I approve of him, I would absolutely recommend."

Of whom are you approving, whom recommends?

A I said I would approve of one, I would absolutely recommend getting a good attorney.

Q Were you approving of any particular person?

A No particular person.

Q Were you recommending any particular person at that point?

A Not at that time.

Q You subsequently did recommend?

A Yes.

Q You recommended me?

A Yes.

Q Now, in that same paragraph, you said, "Because of the job, you know where you stand here."

What was the "job" to which you referred?

A It was my misapprehension of the law that he could lose his job. He was working for the FHA.

Q Lose his job, what?

A As an appraiser.

Q Now, why?

A Well, it was my understanding that if a man is investigated, if he refuses to answer questions in connection with his job with the Government, he would have lost it.

Q Were you there referring to any job or position that the Bernsteins were offering?

A No.

Q And did you know of any offer of a position by the Bernsteins to Mr. Goodwin until you heard the offer made that evening?

A Not prior, but at that time I did, I heard the offer.

Q You heard the offer made?

A Yes.

Q Was that the first time?

A First time I heard it.

Q Had you ever discussed that with the Bernsteins, making that offer to Mr. Goodwin?

A. Never, never.

Q Had you ever suggested to the Bernsteins that they should pay, get a lawyer for Mr. Goodwin, and pay him.

A Never.

Q Was that a suggestion that came from them, they had previously made to Goodwin?

A Yes. They had said that they would arrange with Goodwin to pay for an attorney. And my understanding was they were going to foot the bill one way or the other, and help him out.

MR. KORSHIN: I have no further questions.

I have one other question.

Q Mr. Fayer, was it your purpose in any way to violate any law?

A It was not.

MR. WOODFIELD: Objection, your Honor.

THE COURT: He hadn't finished the question. Don't answer the question.

MR. KORSHIN: I had finished the question. I asked him whether it was his purpose in any way to vio-

late the law.

THE COURT: All right.

Now, don't answer until the objection is made.

MR. WOODFIELD: First of all, your Honor, he's, it's asking for a conclusion. I don't see the relevance. It's just a self-serving question.

I withdraw the objection.

A It was not my purpose to violate any law.

Q I ask you again, in the speaking to Mr. Goodwin, did you regard yourself as being in the position of an attorney advising someone who had come to you for legal advice?

A I did so after.

Q Did Mr. Goodwin at any time tell you or intimate in any way that he had not expected to see you at that meeting?

A Never made any such intimation.

Q Did he tell you or indicate to you in any way that he was not seeking legal advice?

A No, sir.

Q He didn't tell you that he was seeking it?

A No.

MR. KORSHIN: I have no further questions.

MR. WOODFIELD: I have some questions, your Honor.

THE COURT: You may proceed.

(continued on next page.)

Q Mr.Fayer, is it not a fact at the time of this meeting on February 9, 1972, you were a member of the board of directors of EasternService Corporation?

A I was.

Q Were you also their closing attorney; is that correct?

A I was.

Q You handled, or members of your law practice, handled all the closings for Eastern ServiceCorporation; is that right?

A I think we handled all of them. There might have been one I didn't know about.

Q Mr. Fayer, were you also retaining counsel for the corporation of Eastern Service Corporation?

A On a retainer basis, no, sir.

Q Yes?

A No, sir.

Q Did you do legal work for Eastern Service Corporation?

A Yes.

Q What did that entail besides the closings?

A Corporate minutes, for example; there were resolutions that might have required to be drawn, Eastern was opening or had opened an office, I should say, in Florida.

I went down there and I worked with the local counsel in Florida. Iworked with the title company and the company in Florida to set up a system.

Q What was your purpose for going to Atlanta?

A Pardon me?

Q What was your purpose for going to Atlanta for Eastern?

A I had not gone to Atlanta. We had -- Eastern opened an office an office in Coral, opened an office in Orlando at the time of this. The next office that they contemplated opening would have been in Atlanta. We had planned to go to Atlanta.

Q Mr. Fayer, is it your testimony that you were present at this meeting on February 9? Your capacity at that meeting was that of attorney; is that correct?

A Absolutely.

Q And who do you say you were an attorney for at that meeting?

A I was the attorney, I was advising Goodwin.

Q And so you considered yourself Goodwin's attorney for the purpose of that meeting?

A I did; yes, sir.

Q Is it your testimony, Mr. Fayer, that you had no knowledge of the criminal involvement of Rose and Harry

Bernstein at the time of this meeting?

A I had no knowledge at this time and I still have no knowledge of it. I know they have been convicted and I'm not questioning that. But the Bernsteins have continually denied they have ever paid a bribe and denied it to me and every attorney they've had.

Q Mr. Fayer, I refer you to page 12 of the transcript. I'll read the portion of the statement you made then and I'd like to ask you some questions on it. Page12, approximately the middle of thepage:

"This is basically my feeling. This is why when they, Rose mentioned this this morning, I said, 'Invite Goodwin to sit down because everybody is in the same boat.'"

Now, Mr. Fayer, what did you mean when you said "same boat"?

A There was an ongoing investigation at which any number of mortgage companies including Eastern Service had been called. They were all in the same position of being targets of an investigation. Every one of them and they were all in the same boat.

Q How did you know the investigation was --

A I had the first, I don't know whether the first time -- but I had several conversations with Mr. Accetta, an

assistant United States attorney in this matter.

Q At what time was this?

A What time?

Q Prior to the meeting on February 9?

A Oh, yes.

Q What was your capacity? Who were you representing when you had those meetings?

A Eastern Service Corporation.

Q Representing the corporation?

A That's right. That's before we obtained other counsel to handle the criminal matters.

Q Mr. Fayer, again referring to the transcript, page 49. I'm going to read a portion of the transcript again, Mr. Fayer, and ask you some questions on it, beginning about two thirds of the way down, beginning with your statement, "I'll tell you this, as far as the Bernsteins are concerned, you are creating a lot of trouble but --

"Rose Bernstein: We're going to deny it.

"Mr. Fayer: They'll deny it (inaudible).

"I'll tell you right now, they'll deny it."

What is it you're referring to in this statement, Mr. Fayer?

A They'll deny statements that Goodwin might make. That he had been paid by the Bernsteins. They told me they

never paid anything.

Q So you are telling us now that you are aware of the allegations that Mr. Goodwin had received bribes from the Bernsteins; is that correct?

A No; he might have made them; as I said before, when a witness or a person is called and makes a deal with the United States Government, there is no telling what he is. I shouldn't say United States, but any governmental agency. There is no telling what he might say to buy his peace and who he may involve.

Q Now, knowing there was a possible conflict between you representing the Bernstein and you representing Mr. Goodwin, you went to this meeting and gave legal advice to Mr. Goodwin; is that correct?

A I did not see any conflict at that time. This is a situation where the Bernsteins and Eastern had already engaged other counsel in the matter. I had said I would not represent him but I would give him advice, and I did as I was saying throughout the transcript that if he were called he should get an attorney. I would not represent him.

Q Again, on page 49 when you state, "They'll deny it," what specifically are you referring to that the Bernsteins will deny, Mr. Fayer?

A Well, what I just said, they will deny any

allegations that might be made by Goodwin as to being bribed by the Bernsteins. They have told me they have never paid a bribe.

Q So again I ask you, were you aware that Mr. Goodwin was making allegations he had received bribes from Harry and Rose Bernstein?

A I was not.

Q Mr. Fayer, at the bottom of page 43.

A Yes, sir.

Q Your statement: "Yeah. Excellent. You are the -- uh -- the small fry here. You know what I mean? Really."

What do you mean by "the small fry here"?

A The investigation that was going had as its target a number of very large mortgage companies in the area. Goodwin, as far as I was concerned, was a small fry. He is the one the FBI had said was a potential defendant or prospective defendant and he was, compared to the mortgage companies, he was small fry.

Q Did you consider Harry and Rose Bernstein large fry?

A Oh, yes. I consider Eastern Service Corporation large fry.

Q If they weren't guilty they wouldn't be fry

at all?

A Pardon me?

Q If they had no guilt, if they were innocent, they couldn't have been fry?

A Small fry could be a small fish. Small as opposed to large.

Q Mr. Fayer, I refer you to page 36 of the transcript, approximately two-thirds of the way down, your statement: "Ed, from what I understand (inaudible) they haven't been able to find anything, so that --"

What did you mean in that statement, Mr. Fayer, specifically, what did you mean when you said "they haven't been able to find anything"?

A I had had a conversation with the Assistant United States Attorney Accetta. Accetta had made a statement that there were mortgages being placed on nonexistent houses and I told him this was impossible. I repeated in here Survivor's Title Company, buyers, sellers and there are just too many people to be able to put a mortgage on a nonexisting house. I had challenged him to produce one nonexistent house and this goes back -- I don't -- at this time I would say three, four, five months prior thereto. They haven't been able to find one yet.

Q How does that knowledge apply to Goodwin at all,

Mr. Fayer?

A I was just telling him the story. If you read the page 34 or 5 right on, this is the entire incident that I am telling you about.

Q Mr. Fayer, I refer to page 45 of the transcript, approximately two-thirds of the way down, and I'll read the portion of it, and then ask you questions on it. Beginning with:

"Mr. Fayer: We assume that everybody sits tight --

"Rose Bernstein: Nobody says anything.

"Mr. Fayer: Then he doesn't have a case. Doesn't have --

"Harry Bernstein: He hasn't any.

"Mr. Goodwin: No?

"Mr. Fayer: On the other hand --

"Rose Bernstein: If somebody's going to talk --

"Mr. Fayer: Somebody, this is why I am here tonight. If somebody opens up, then he's got the beginnings of a case."

Again, Mr. Fayer, what was your purpose for being there that evening?

A To advise Goodwin.

Q What did you mean when you said this statement,

"Somebody, this is why I am here tonight. If somebody opens up, then he's got the beginnings of a case"?

A I was told that Goodwin had spoken to this friend of his and he was considering cooperating with the Government. I told him in no uncertain terms that if he were to speak, the Government would have the beginnings of a case. No question about that.

Q So you referred to "case" here as limited to a case Mr. Goodwin --

A No; could be against Goodwin, could be against anyone that speaks. Would be against anybody who implicates themselves or implicates others.

Q Could it have been Harry and Rose Bernstein, Mr. Fayer?

A Could have been, yes, sir.

Q Mr. Fayer, I refer you to page 25 of the transcript, your statement near the top of the page: "We have counsel, counsel for -- uh -- (inaudible) -- not kidding ourselves, for Schiller, for Fey, for Florence Behar. All of them. Every one of them."

First, Mr. Fayer, who are you referring to when you say "we"?

A Eastern Service Corporation.

Q You consider yourself as part of the Eastern

Service Corporation?

A This was a -- just "we." I'm the attorney. I'm using a "we" statement.

Q So you did, you aided in getting counsel for these people, Schiller, Fey and Behar?

A Yes.

Q How did you aid in getting that counsel?

A For example, when Fey came up to me he was a former employee. He had told me that he had been subpoenaed. I told him that he should get an attorney and I called and he was in my office. I called and I guess I probably -- Harry Bernstein -- and told him that Fey had been served with a subpoena. He needed an attorney. And Harry said, "Okay." He would foot the bill.

I called, I think Fey was represented by A. Brodsky, I am guessing. I think it was A. Brodsky at the time. The same lawyer for Florence Behar, who was an employee of Eastern. Either Brodsky or Boitel.

I am not certain who represented which, but the same lawyer with Schiller.

Q Did you discuss their cases with them?

A Did I? I think the only one I discussed a case with is Fey. Florence Behar was, I'm speculating, I think I might have discussed it with Fey, probably Florence

Behar was still an employee. So she just went down to the attorney. I don't think I discussed it with her.

I don't think I might or might not have discussed it with Schiller, but Fey I remember definitely that I don't know.

Q Did you discuss it with him in your professional capacity as an attorney?

A With Fey, yes. He asked me for my advice and I gave it to him and I then called Brodsky to find out if Brodsky would represent him. Brodsky said, "Send him down."

Q Did you discuss the facts with him?

A With Fey?

Q With any of those individuals named?

A No.

Q But you gave them legal advice?

A Yes. I told them the best thing for them to do is to sit tight until they spoke with an attorney.

Q Did you discuss with them any other avenues they might take involving this investigation?

A No. I was not going to represent them.

Q But you offered them legal advice; is that right?

A Yes, sir.

Q Do you offer legal advice before discussing

fully the case with your clients?

A Advice of this nature, yes. I fully believe that a man should sit tight and say nothing until he sees an attorney.

Q Mr. Fayer, are you aware of any advtantages that might be gained by an individual who cooperates with the Government?

A Am I aware of advantages? Yes.

Q What are the advantages?

A Reduced plea, basically they can also reduce the number of counts or make it a one count. They can reduce the seriousness of the offense.

Q Did you discuss that with Frank Fey at all?

A No.

Q Florence Behar?

A No.

Q Roy Schiller?

A No.

Q Edward Goodwin?

A No. That would have been something for their attorney to discuss with them.

Q You stated to us today you represented them. You advised them in a legal capacity; is that correct, Mr. Fayer?

A I was advising them as an attorney to keep quiet until they worked it out with an attorney, a deal with them, and I still believe that.

Q Mr. Fayer, I refer you to page 27 of the transcript, top of the page, the second statement you made: "This is the thing. Now, the answer is here, what do you gain? And that's the real, that the real $64,000 question question. What do you gain? You can only lose. You can't gain."

Is that the advice that you gave to Goodwin concerning his testifying and cooperating with the Government, Mr. Fayer?

A Not insofar as his testifying. Insofar as his answering any questions with the FBI, the FBI, it's my understanding they're not empowered to make any deal or negotiate with him. He had nothing to gain by saying a word to the FBI.

Q At any time throughout this entire evening, did you discuss with Mr. Goodwin the advantages of cooperating with the Government?

A No.

Q Mr. Fayer, I refer you to page 78 of the transcript, your statement in the middle of the page:

"I have representatives, I have engaged,

I'm shall we say directing things. The theory is I, we have engaged various attorneys for Eastern Service Corporation."

Mr. Fayer --

A We had various attorneys for various parties in the situation. Those were the attorneys who had met with me and asked me information about the background and so forth and I've been meeting with them.

Q But you continued to give those people legal advice; is that correct, Mr. Fayer?

A Which people?

Q Fey.

A Not Schiller.

Q You told them to take the Fifth, Schiller, Fey and Behar?

A I told them I would represent them absolutely keeping quiet until they spoke to their attorney. Then, they sat down and they all engaged counsel and they met with their counsel representatives.

Q Mr. Fayer, page 53, starting with Rose Bernstein's statement near the top of the page:

"Al, isn't it true in order, in order to prove certain things strictly, wouldn't there be a third party to see?

"Fayer: No. You see, the thing is this. Not necessarily a third party. We could happen to have a check.

"Rose Bernstein: You'd have to have a check.

"Fayer: You'd have to have, uh, the bank deposits."

Mr. Fayer, is it still your testimony you had no knowledge of Harriet Rose Bernstein's involvement with Mr. Goodwin?

A Of course we're discussing proof.

Q What kind of proof are you discussing?

A Any type of proof to prove a case. At the beginning of this transcript, Goodwin asked me the question as to whether an accusation is sufficient. I said that you need proof.

The bottom of this page, I said the very same thing. A naked accusation is not sufficient. You must have some proof and I don't care whether, checkbook, deposit, testimony, but you must have proof.

Q Proof as to what kind of crime, Mr. Fayer?

A Any kind.

Q What kind of crime with books or bank deposits or checks or --

A Checks. This was Goodwin accepting bribes.

Q From whom?

A My belief was from other mortgage companies. That's why he was so concerned and this is why he wanted advice. This is why I met with him.

MR. WOODFIELD: May I just have a moment?

THE COURT: Take all the time you wish.

Q Mr. Fayer, page 33 of the transcript, your statement in the middle of the page:

"Don't forget I said we know, let's not kid ourselves -- uh -- we have for our own benefit been keeping our fingers on the pulse of this thing."

Mr. Fayer, in that statement again what did you refer to when you said "for our own benefit"?

A The various attorneys had all been speaking to each other determining who had been down before the Grand Jury and who was testifying and so forth. The rationale, of course, being they wanted to know how far the investigation had progressed.

As to whether it was against only one company or a number of companies and so forth. That's one of the ways they found out that there were a number of companies being investigated because there were employees of various companies.

Q One being Eastern?

A One being Eastern, yes.

Q Mr. Fayer, did you believe that if Mr. Goodwin's statements concerning bribes weren't true, would they hurt Eastern at that time?

A If they weren't true?

Q Yes.

A Certainly they could hurt Eastern.

Q Mr. Fayer, you were aware then that Harry and Rose Bernstein made an offer to pay Mr. Goodwin's attorney's fees; is that correct?

A Well, let me put it this way: I was aware of the fact that they had made an offer to see that his attorney fees were paid. Whether they were going to pay the fees, give it to him as a gift or whether lend the money or not, I did not know. I did know, however, that they had told me that in the Florida situation with the stepson, they never got anything back from him.

So that it would not have surprised me if they were going to pay for the attorney fees themselves.

Q Well, you steered them right to Mr. Bernstein in your statement on the tape of the 12th; isn't that correct, concerning attorney's fees?

A Yes. I didn't know whether it was going to be a loan or gift or what. Wouldn't surprise me if it was a

gift or whatnot.

Q At that time, you were aware of Mr. Goodwin's allegation concerning bribe payments; is that right?

A No. I suspected them but not as far as the Bernsteins are concerned.

Q Bribe payments; that is, receiving bribes from various individual lending institutions; is that correct?

A I had assumed that to be so, yes.

Q One being Eastern Service Corporation?

A No. They denied constantly they had ever paid five cents to him.

Q In the statement referred to previously, when Harry and Rose Bernstein and yourself said, they'll deny it, concerning Mr. Goodwin's statements, what again are they going to "deny"?

A If Goodwin were to cooperate and if Goodwin were to make an allegation against them, they had said they had never paid it and they would deny any such allegation.

Q So you were aware of the possible conflict between Harry and Rose Bernstein, paying for an attorney for Mr. Goodwin, an individual who could potentially testify against them; is that correct?

A No. At that point there was no conflict.

Q Mr. Fayer, do you think that Mr. Bernstein

would have paid Mr. Goodwin's attorney fee if he had testified in the Grand Jury?

A In my opinion, yes. In my opinion, they would have. Goodwin would have retained an attorney and the attorney would have asked for a retainer. Goodwin would have come to them and they would have either loaned or given him the money.

Q Is it your opinion the Bernsteins would have offered and given Mr. Goodwin a job in Florida if he testified in the Grand Jury against the Bernsteins?

A If he testified against the Bernsteins?

Q Yes.

A No, I don't they they would have given him a job.

Q It is your contention that that offer, the job in Florida and the payment of attorney fees, had nothing to do with Goodwin's testifying in the Grand Jury, testifying concerning bribes, concerning the Bernsteins?

A That offer of a job in case he lost his job, in case he had refused to testify, in case he had received bribes from any of the other mortgage companies. They were friends and they'd back him up and give him a job.

Q So your answer to the question is, No?

A May I have the question read back, I'm sorry.

THE COURT: Rephrase the question if you want

it answered.

MR. WOODFIELD: No, I don't wish to ask the question, your Honor.

Q Page 68 of the transcript, Mr. Fayer, down at the bottom of the page where Harry Bernstein states:

"If you say anything, it blows everything."

Were you present when that statement was made, Mr. Fayer?

A I really don't know. I think so but I don't remember. I'm going back -- I don't remember having left. I would assume I was present.

Q Right above, where Mr. Bernstein says, "I am working behind the scenes," throughout this conversation, Mr. Fayer, throughout those statements made by Mr. Bernstein, what did you believe it to be referred to?

A It to be referred to? One of the questions was as to how far the Grand Jury had been progressing with Eastern and naturally Harry Bernstein was speaking to every one of the lawyers involved to find out what they knew, if anything. He was definitely working on that.

As far as, "If you say anything, it blows everything," if Goodwin said anything he would be finished.

Q Who would be finished?

A Goodwin.

Q So is it your statement that Harry Bernstein was not referring to himself but referring to his respect and concern for Mr. Goodwin?

MR. KORSHIN: I object. I think the question should be what the witness's understanding of the statement is, not what Bernstein meant by the statement.

Q Was that your understanding of what Mr. Bernstein meant?

A Yes, that was my understanding. The Bernsteins constantly denied giving the man anything.

Q Mr. Fayer, have you ever discussed Mr. Goodwin's case with Mr. Goodwin other than on this occasion?

A No.

Q Had you ever discussed it with his attorney, Mr. Roll?

A No.

Q Throughout this transcript you make numerous -- in fact on numerous occasions you stated in the transcripts to have his attorney stay out of the case. Do no investigating; is that right?

A I don't recall no investigating. I certainly felt his attorney had misadvised him and should stay out of the case at that stage. No question about it.

Q Bottom of page 50, starting with Rose Bernstein:

"But tell him not to do any investigation (inaudible).

"Harry Bernstein: Don't do any investigating on his own, don't do anything. Just don't worry.

"Fayer: Please stay out of it. Please.

"Goodwin: Stay out of it.

"Fayer: At the point, the point --

"Rose Bernstein: Tell him not to do any investigating.

"Harry Bernstein: You can tell him it may be dying down.

"Fayer: Right. Yes, but if you are subpoenaed --"

Again, on other pages and this page, Mr. Fayer, there are numerous references to having his attorney stop an investigation. What was your purpose in offering and giving that advice to Mr. Goodwin?

MR. KORSHIN: I object. Counsel is interpreting Mr. Fayer's words, "Please stay out of it," in a way which may not be correct. I think the witness should be asked to whom he was addressing that remark.

Q Whom were you addressing this remark to, Mr. Fayer?

A "Please stay out of it" was Rose Bernstein.

She had no right to tell him not to do any investigation.

Q You only have the right because you were the attorney, right?

A Harry Bernstein said the same thing and I didn't think it made any sense. Because as far as I was concerned, the attorney, and as I said, if you are subpoenaed then is the time to get an attorney. I certainly didn't think that Roll was doing the job he should have done.

Q That determination was made solely on the knowledge that you had that Roll had suggested cooperating with the Government; is that correct?

A Yes. At the first meeting with the FBI, Goodwin had said he was a possible, the FBI told him he was a possible defendant or a prospective defendant in a, I don't remember what he had told me, defendant in a case.

At that point, I felt it was premature for anyone to discuss cooperating with the Government.

Q Again, on page 75 at the top of the page, Mr. Fayer:

"Harry Bernstein: Tell him not to do anything. Drop it right here and there because the (inaudible) -- it is under control.

"Fayer: Tell him to drop it. In the event you're served with a subpoena, then we'll seeabout a

top drawer. Then you're, then you're top drawer man."

What is it you are referring to there, Mr. Fayer?

A Drop any discussions about cooperating until such time as he can work something out or is served with a subpoena.

Q Not an investigation?

A Not the investigation, no.

MR. WOODFIELD: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. KORSHIN:

Q Mr. Fayer, you were asked on cross-examination if you were a member of the board of directors of Eastern Service Corporation.

A Yes.

Q How did you happen to become a director?

A I was the attorney for the corporation and they needed at that time, I don't remember what the certificate of incorporation was -- X number of directors, and I was one of them.

Q Did you ever perform any duties or functions as director of Eastern Service Corporation?

A No.

Q Who ran the company?

A Harry Bernstein.

Q Did you have any voice in operating the company as director?

A No.

Q Mr. Fayer, look at page 70, please, of the transcript. You were asked some questions on cross-examination toward the middle of the page:

"I have, I have representatives, I have engaged, I'm, shall we say, directing things."

You were not asked what you meant by the statement 'directing things. Were you directing anything, actually?

A No. I wasn't actually directing but the attorneys were contacting me whenever they wanted information. The various attorneys.

Q Yes. Why did you make this statement, that you were "directing things"?

A Let me say I was pushing myself, could be.

Q Please go to page 33. You were asked some questions about the statement that you made towards the middle of the page:

"Don't forget I said, we know, let's not kid ourselves -- uh -- we have for our own benefit been keeping our fingers on the pulse of this thing."

Whose fingers were you keeping on it?

A Eastern Service.

Q No question?

A And their employees.

Q And their employees?

MR. KORSHIN: I have no further questions.

MR. WOODFIELD: I have some questions.

RECROSS-EXAMINATION

BY MR. WOODFIELD:

Q Mr. Fayer, when you were advising Mr. Goodwin on the 9th, your concern was Eastern Service Corporation; is that correct?

A My concern on the 9th was Goodwin and there is no doubt that I was fully aware of the fact that any advice or anything I might say could possibly inure to the benefit of Eastern Service.

Q Could?

A Could.

Q In your experience as an attorney, do you consider that a conflict of interest, Mr. Fayer?

A No.

Q How many criminal cases have you handled in the years as an attorney, Mr. Fayer?

A Not too many. I really don't know, I am not

a criminal specialist, if that's what you're driving at.

Q When was the last time you handled a criminal case?

A Seven, eight years ago, six, nine years ago, about then.

MR. WOODFIELD: I have no further questions, your Honor.

MR. KORSHIN: I have no questions. The defendant rests.

If the Court pleases, I do have a question, if I may.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. KORSHIN:

Q You made a statement, Mr. Fayer, in response to a question. You didn't think there was any conflict of interest. Why not? Can you explain that answer?

A At this stage Goodwin had been interviewed by the FBI and he was seeking advice as to a course of conduct to pursue.

Q With whom?

A With me.

Q No. To pursue a course of conduct with whom?

A With the Government.

Q Go ahead.

A My personal feeling was at this early stage in the game, he would best -- his best interest would be served by sitting tight. If things developed, then he'd better get an attorney, someone else other than myself.

Q You felt that did not create a conflict?

A No.

MR. KORSHIN: Nothing further, your Honor.

(Continued on next page.)

THE COURT: I have some questions, if there is no objection.

MR. KORSHIN: No objection at all. I welcome them.

THE COURT: On page 22, in the middle of the page, you were quoted as, "I told her you refused to testify." I take it that was Rose; is that right?

THE WITNESS: Yes.

THE COURT: At which point, Goodwin says, "Everybody just takes the Fifth." And you say, "That's right." Were you advising Goodwin to take the Fifth?

THE WITNESS: We are talking about everyone that had been called down to the grand jury that we knew of as far as Eastern or Eastern employees had pleaded the Fifth. Every one of them, to our knowledge at that time.

THE COURT: Did you consult with their attorneys in connection with the advice to take the Fifth?

THE WITNESS: Oh, yes. I was fully aware of the fact. I had met with Judge Rifkind and I had met with the prosecutor. We had all been handling this situation in concert with each other, all the attorneys. We all were aware of the --

I was aware of it. No question in my mind.

THE COURT: Were you aware the tactic was for all of them would be to take the Fifth?

THE WITNESS: Yes. Every one of them had been advised to take the Fifth. They had so pleaded.

THE COURT: Weren't you concerned for your clients at that time that a breach by Goodwin would destroy that tactic?

THE WITNESS: Well, I didn't feel that Goodwin was involved with the Bernsteins. The Bernsteins had denied this, your Honor, to me. They had denied it to Judge Rifkind and they had denied it up and down the line.

THE COURT: But you were an experienced man. You knew there was a possibility they were lying, didn't you?

THE WITNESS: There was a possibility they were lying. I really felt if they would have told anyone the truth, I think they would have told me. I think I have been representing them for a number of years.

However, at that point I had no alternative but to believe them and --

THE COURT: On page 29, in the middle of the page, there is a series of statements which we have now constructed to read as follow, Rose is saying - I take it this is a hypothetical - "But we have testimony that you took money from the Bernsteins." He is proposing that that's what the FBI agent will tell Goodwin?

THE WITNESS: Yes. That would have been my understanding.

THE COURT: Then you say, "Yes." And then Goodwin says, "No."

Then, Rose Bernstein, I take it, addresses you and says, "Don't you think at that point Ed," meaning Goodwin, "should have said that testimony was true"? That was directed to you, wasn't it?

THE WITNESS: Yes.

THE COURT: Then you say, "Wait. Should have said it's a lie, but, however, what's the difference?"

Were you advising Goodwin to say it was a lie?

THE WITNESS: No, that's in the past, your Honor. This refers to the time when the FBI agent had interviewed him and apparently he had

been interviewed by the FBI. If he had been interviewed, I should have denied it instead of standing pat.

THE COURT: You hadn't asked him if it was a lie?

THE WITNESS: No.

THE COURT: How did you know it was a lie?

THE WITNESS: I assumed it was a lie.

THE COURT: How did you advise him to tell a man that is a lie without inquiring?

THE WITNESS: This was in the past, your Honor. In other words, if the statement had been a lie, he should have said it's a lie.

THE COURT: I see.

MR. KORSHIN: If the Court pleases, I think perhaps there should be some classification about U.I. and L. that refers to mortgage mortgage broker; that referring to mortgage broker firm.

THE WITNESS: Your Honor, I said, "What's the difference?" It was over and done with.

THE COURT: Directing your attention to the lower portion of page 45, you are quoted as saying, "We assume that everybody sits tight." Was that in connection with the testing for that all the

attorneys had agreed upon to say nothing?

THE WITNESS: Oh, yes. Because the feeling had been and I expect the experiences that in those white collar claims, unless someone breaks down, it's very, very difficult to establish a case.

THE COURT: And you were concerned, I take it, with protecting Eastern, and, indirectly, the Bernsteins in connection with that tactic?

THE WITNESS: Yes. They were a client of mine.

THE COURT: Now, at the bottom of the page then, you say, "Somebody, this is why I am here tonight."

There that night to prevent Goodwin from talking?

THE WITNESS: No, sir. Goodwin had said that he was considering cooperating and this is what I was told. And my advice to him would have been not cooperate at the FBI level. That's why my feeling was he asked for the advice and that's why I wasthere that night. That's why I told him if he does, he is going to have the beginnings of a chase.

And this is why I says, "If it goes any

further, I think" -- your Honor, I have said this before, I said I don't know on how many occasions here here, "If this goes further, get an attorney, get an attorney."

But at that stage of the game, I believe then and I believe now you don't talk until you've made a deal or done something.

THE COURT: You hadn't asked him whether he had made a deal, though, had you?

THE WITNESS: No. I had been told that he had not. I had been told that he had a conversation only the day before and from one day to the next, I didn't think he had anything.

THE COURT: As an experienced attorney, don't you know it is undesirable to talk to one person in the presence of others where there is a possible conflict in getting their information?

THE WITNESS: Your Honor, I was dealing with people who had been advised were friends. They were friends for years. Goodwin, as I was told, I was -- I firmly believed, was in need and wanted some additional advice.

If he was -- it was the additional advice, I had no objection to sitting down and giving him my

opinion in the matter.

I made it very clear that I would not represent him but at this early stage, I truthfully saw no conflict at this stage of the game, your Honor.

THE COURT: Did you know his then attorney by reputation or otherwise?

THE WITNESS: No. I didn't even know who he was.

THE COURT: How could you say at the bottom of 48, "He just isn't qualified"?

THE WITNESS: It is my opinion, and I say this to your Honor with all due deference, I am repeating myself, that when a man sits down for a couple of minutes --

THE COURT: How did you know that he sat down for a couple of minutes?

THE WITNESS: By who? Rose Bernstein.

THE COURT: Don't you think, as an attorney, you have an obligation, if you are giving somebody legal advice, not to rely upon this kind of hearsay from an interested party, who has a conflict?

THE WITNESS: Your Honor, I don't remember whether -- let me answer your question this way: I did not feel I was giving him, shall we say,

critical advice at that point. This was merely advice to sit tight and to say nothing, and then get an attorney and I really didn't think it was, shall we say, a conflict or anything there that I would not have said in the presence of anyone else.

THE COURT: Weren't you aware of the fact that a loss of a job would put great pressure on this man not to testify?

THE WITNESS: Your Honor, a very hard question to answer. Let me try to answer it this way:

I knew from what they had said, they had been friends friends for a long time. This is something Goodwin said and they all said. If Goodwin were to lose his job because of his refusal to testify or cooperate, what have you with respect to any of the other companies, the Bernsteins would certainly fire him. He was a friend and they'd give him a job. This is what I understood.

I did not think that it would be a situation where the Bernsteins would be involved. My feeling is that they were friends and, having been friends for this period of years, whatever, the thing is they said a number of years.

He was not either taking anything from them

or he was not going to for them. There is always a possibility I recognize there is always that possibility.

THE COURT: Did you have, from your mind, at that time that he might testify against them to save his own skin?

THE WITNESS: Yes. There was that possibility but the job offer was made even if he lost his job testifying against someone else.

THE COURT: I don't understand those references to Doug Homburg. I understand he went south to work at one of the branches.

THE WITNESS: This was --

THE COURT: This is on page 71.

THE WITNESS: This was rumor going on.

THE COURT: Was, do you know, if Homburg was under suspicion?

THE WITNESS: To my knowledge, he was in Florida. Just rumor passed he had left. When he left from Florida, the proceeding today.

THE COURT: Now, at the bottom of page 89, there is an exchange that goes like this: Harry Bernstein says, "Like you always were. You were very much evasive.

"Rose Bernstein: If any asks you anything, the answer is no, no no.

"Harry Bernstein: I don't know what you are talking about."

Meaning, I take it, what Goodwin was supposed to say; is that right?

THE WITNESS: I don't follow that, your Honor.

THE COURT: Take your time and --

THE WITNESS: What Goodwin was supposed to say. What was Goodwin saying? When you say I don't know what Harry Bernstein says --

THE COURT: You don't know what that means, all right. Then let's go to the next line.

THE WITNESS: He is referring to something he doesn't understand what somebody is talking about. I am trying to place it, if I may.

THE COURT: Take your time.

THE WITNESS: The only thing I can think of, and this is, I am speculating, Rose Bernstein previously had said if anybody asks you anything, the answer is no. So he doesn't answer any questions.

Henry Bernstein says, "I don't know what you are talking about." I am telling Goodwin to say, "I don't know what you are talking about." I am

speculating on that, but that's the way it seems to me.

THE COURT: Then you say, "I tell you this and I can assure this. That these two, as far as anything is concerned, will not talk."

Now, in the context, didn't mean with respect to accusations that the Bernsteins were paying Goodwin?

THE WITNESS: No, I don't think so. What had happened, and I am going back a ways. I had attended meetings with various counsel, and I had attended meetings where the Bernsteins had the stories related previously in the tapes were told. That they would, or not to talk there to plead the Fifth Amendment. This took place in Judge Rifkind's office and this is the story there. Where he had said that if any client of his ever went down to talk first, this on a waiver and those, and I was positive I was merely certain that the Bernsteins would plead the Fifth, if anything was said. That's how strongly it was put.

THE COURT: Weren't they talking on page, 88 and 89, about accusations or possible accusations that the Bernsteins were paying to Goodwin?

THE WITNESS: No, your Honor. I don't see that context.

THE COURT: When Harry Bernstein says at the bottom of 89, "We don't know what you are talking about." He may mean Gross and Harry Bernstein and by "you are" mean Goodwin.

THE WITNESS: I don't think so, your Honor. If you go back and start at page 87, for example, right through at page 87, they denied ever giving anyone anything. They denied, they told it to their attorney in New York, Judge Rifkind. They go along and Rose Bernstein says on 88, "Don't you see what you are doing to yourself," so forth and so on.

And they tell him any time he has to leave, they will give him a job.

Anything, any question, the answer is just say no, he is not get himself involved. I said there is no question that the Bernsteins are not going to talk about anything. So that he is getting no different advice. Then the Bernsteins received --

THE COURT: On page 91, you say, "I would absolutely recommend a refusal to talk. Because

of the job, you know where you stand here."

Did you have any expectation that this would in this context in just a position which would lead him to believe that if he did talk, the job would not be his?

THE WITNESS: No, no. Because of the job, his job with the FHA, I had told him before that if anything he said, he was going to lose his job or, rather, if he refused to talk, he was going to lose his job. This is why I recommended a good attorney. I would recommend he get a good attorney and he knows where he stands because he is going to lose his job when he does talk or when he refuses to talk. But that's his problem.

THE COURT: Weren't talking about the job that is referred to on page 89 and before and after that under "week vacation" before he starts with the Bernsteins?

THE WITNESS: Oh, no. Because right immediately after when I said, "Because of the job, you know where you stand here." He is going to lose his job and that's why Harry Bernstein said, "You will still work with us."

THE COURT: I have no further questions.

MR. KORSHIN: I have none. The defendant rests.

THE COURT: Any rebuttal?

MR. WOODFIELD: No, your Honor.

THE COURT: Why don't we take a few minutes' recess and then I will hear argument.

(A short tecess was taken at 12:15 p.m.)

(Continued on next page)

(After recess: 12:35 P.M.)

THE COURT: I'll hear from defense counsel first.

MR. KORSHIN: If the Court pleases, I'll address myself first to a question that you asked Mr. Fayer and the answer that he gave you. Asked him whether as an experienced attorney he should not have ascertained the fact as to what may have happened as to the FBI. Mr. Fayer's answer was not entirely clear, but if your Honor will look at the bottom of page 19 of the transcript, also pages 27, 28, 29, your Honor will see that Mr. Goodwin told him precisely that which Mr. Fayer said he was acting upon. So he did have the facts at that time from Mr. Goodwin himself.

I'll address myself first to the indictment in 1972 and that's 72 CR 589. I submit to the Court that there is no evidence in the case that Mr. Fayer was aiding and abetting the Bernsteins. The offer of paying a lawyer was made, as appears from the tape of the conversation between the Bernsteins and Goodwin on February 8. Before Mr. Fayer was in any way involved in the situation, the offer of the job in the event that Goodwin lost his job was not made by Mr. Fayer. He sat at a dinner table with three

other people and those people said to Goodwin, If you lose your job with the FHA, we will give you a job. What was Mr. Fayer to say at this point? How did he become involved in that? How was he aiding and abetting if all he did was to sit there and say nothing; that's all he did do, was to sit there and say nothing.

I think it should be borne in mind in that connection that Mr. Fayer had been told that these people were not dealing at arm's length. They were friends and friends were offering a job to someone who might be in distress. I don't think there was any obligation on Mr. Fayer at that point to do anything.

Now, I address myself to the second thing; and, of course, what I'm about to say will apply to the first count as well; namely, to that part of the first count which relates to influencing of Goodwin's testimony. I say on that score if the Court pleases, at the very least there is a reasonable doubt as to what Fayer's intention was. The man was told Goodwin wants legal advice. He wants some advice; come and join us, or Fayer said, "Invite him up here. I'll be glad to talk to him."

Instead of his coming there, the dinner is arranged and Fayer is there for the purpose of giving

him legal advice. There isn't any question, none at all, that the advice that Fayer was giving Goodwin couldn't break down to the benefit of Eastern Service Corporation, but that didn't in any way detract from the fact that Fayer was giving advice to Goodwin.

Then we must consider what was the advice he was giving to Goodwin. He wasn't telling Goodwin anything at all about testifying. Repeatedly, over and over again, the transcript shows that the advice Fayer was giving related to interviewing with the FBI. And repeatedly, Fayer said if it goes past that stage, then you must have a lawyer.

Presumably, I do wonder whether the transcripts says that Mr. Fayer -- contains words that Mr. Fayer said at that point, "You must follow your lawyer's advice." But that is certainly the implication that at that point you must follow your lawyer's advice. I don't know that it constitutes a crime to tell a person not to talk to the FBI and now again, I heark back to the motion that I made yesterday, that this man as far as Mr. Fayer knew was not then a witness. He was a prospective, a possible defendant, not a possible witness.

I think that summarizes my position, if the Court pleases.

MR. WOODFIELD: If I may, your Honor, I'll respond in the order of the counts that Mr. Korshin discussed.

Initially, the bribe count of aiding and abetting, the bribe count, it is clear as Mr. Korshin points out, a bribe of attorney's fees is offered on February 8th. However, again on February 9th meeting repeatedly discussed, that is, payment of attorney's fees by Harry and Rose Bernstein. The question appears to be what role if any did Mr. Fayer play in this. And it is again clear, your Honor, on page 70, where discussion is concerning attorney's fees, and discussion of the job in Florida. Mr. Fayer complements this discussion by stating that Eastern Service Corporation is a growing business. They're expanding, just been to Florida and had a conversation with Doug Homburg, soon to go to Atlanta. This coversation, this was aiding and abetting clearly, your Honor, aiding and abetting the job offer.

Now, with regard to the attorney's fees, again, it is clear on the tape of the 12th when he referred to the statement, "Mr. Goodwin states to the effect that concerning attorney fees, if he runs into any roadblock, contact Harry." Mr. Fayer responds, "Right. Contact Harry Bernstein."

I think what is clear, your Honor should consider by not looking at the tape, not dissecting the tape by statements that are made, but just Fayer's mere presence at the meeting of the 9th.

Here is Harry and Rose Bernstein, who the day before saw the first crack in the wall of their life caving in; that is, in a bribery relationship one of the parties involved, possibly would testify. Harry and Rose Bernstein did what they could; that is, told them to be quiet and take the Fifth Amendment. We'll pay for your attorney fees, but they were concerned. They wanted to give Goodwin more assurances and those assurances were Mr. Fayer.

He appears on the next day and he's there as an attorney and repeats throughout the transcript, as he indicated himself here on direct examination, a "busting."

If you have anything, his stature as an attorney led Goodwin to believe that he had knowledge about criminal cases, where he hasn't handled a criminal case in years.

What I think is the key, though, he's an attorney and he's there advising a layman and I can't but stress that point. I think Goodwin was misled, had false assurances from Fayer when Fayer

states to him, "Don't worry about the investigation, they're going nowhere. The Fifth Amendment is the best course to take. Your present attorney is inadequate." And also he was assured that the Bernsteins wouldn't talk.

The other half of the bribery relationship wouldn't give him -- he could have assurances there. So that's where the references are in the tape to "You can only hurt yourself if you testify because the other half of the bribery relationship won't testify. You can be assured of that."

With regard to the obstruction of justice count, your Honor, of course, here as Mr. Fayer continues to deny any involvement of the Bernsteins in the bribery relationship. I think it is worth while to go over a few of the statements made in the transcript to show that this statement by Mr. Fayer is somewhat beyond belief.

Initially, on page one of the transcript, again, it states: "Rose has mentioned to me this morning, uh, what you had said to her yesterday."

Page five of the transcript, Fayer states, "If you talk you know you're gonna be let go anyway, and then you're opening other avenues for yourself."

Page five of the transcript, again, "They're

in the same position. Everybody is in this position."

Again, on page 22 of the transcript, Fayer "Everyone is in the identical position. They're damned if they do, and they're damned if they don't. You think they're not in that same position? And this is why I have said and my advice is this to them: Refuse to testify. And this is what they did."

Again, I think it's clear, your Honor, that Mr. Fayer, I don't believe it is contested that he had full knowledge of the investigation going on. He states in there he had knowledge of the testimony that the Government had of Kartone. The Government wasn't dissatisfied with Kartone's testimony and that it also states, one portion of the tape, that, "He had or we had our fingers on the pulse of the investigation."

I think one of the more enlightening statements though, your Honor, is the statements made by Mr. Fayer on page 45 and 46, which indicate not only his knowledge of the criminal activity of Rose and Harry Bernstein, but also his insight as to Mr. Fayer's role at that meeting. At 45, Fayer states, "We assume that everybody sits tight --

"Rose Bernstein: Nobody says anything.

"Fayer: Then he doesn't have a case -- doesn't

have --

"Harry Bernstein: He hasn't any.

"Goodwin: No?

"Fayer: On the other hand --

"Rose Bernstein: If somebody's going to talk--

"Fayer: Somebody, this is why I am here tonight. If somebody opens up, then he's got the beginning of a case."

You Honor, I think that statement can only be interpreted one way. There's a clear inference to draw from that statement that he has knowledge, has knowledge of the bribery relationship and his reasons for being there was not to plug up the only possible leak from that bribery relationship, that is, keeping Goodwin quiet.

I think it is also clear, your Honor, what Fayer's motives were in doing this. I don't need to dwell on that and I think it is obvious there were two motives: one being, close relationship to the Bernsteins and, of course, the other being his own financial well being as an attorney for Eastern Service Corporation.

It is the Government's contention, your Honor, that Fayer with Harry and Rose Bernstein were in a sense covering up Eastern Service Corporation. Fayer's

presence at that meeting was direct towards that goal, specifically, to keep Goodwin quiet. I think throughout the conversation it is clear that Fayer stresses to Mr. Goodwin that Goodwin would lose his job, IRS problems will arise.

The only way that anyone can be hurt is if they hurt themselves. He tells Goodwin he's never heard of a client testifying. Never throughout these proceedings to have Goodwin tell the truth. Specifically, on page 49 when Fayer states, "I'll tell you this, as far as the Bernsteins are concerned, you're creating a lot of trouble but they'll deny it."

I think this coverup, this orchestration of a coverup, again expressed on page 78, the statement, "I have, I have representatives, I have engaged, I'm shall we say directing things. The theory is I, we have engaged various attorneys for Eastern Service Corporation."

Again, your Honor, the recommendation statements made by Fayer influencing Goodwin to take the Fifth Amendment, stressing the Fifth Amendment. For instance, page 18, when Fayer states, "But -- uh -- you see, getting back to -- uh -- what you say, my feeling is everybody sit tight, everybody has to sit tight. This is what I've advised them. This

is what everybody has done."

Again, Fayer discusses with Goodwin regarding testifying and states, "Everyone is in the identical position. They're damned if they do, and they're damned if they don't. You think they're not in that same position? And this is why I have said, and my advice is this to them. Refuse to testify. And this is what they did. I don't know if you're aware of it.

"Goodwin: This is what they told me.

"Fayer: I told her, you refuse to testify.

"Goodwin: Everybody just takes the Fifth.

"Fayer: That's right. Now, same thing (inaudible). Frank Fuy was called down, same thing. Schiller was down. Everybody was down. This is exactly the same thing--

"Goodwin: They had him down already?

"Harry Bernstein: Yep. All of them.

"Fayer: Oh, sure. Each and every one of them. Everyone did the same thing! Refuse!"

Again, I won't quote statements made by Fayer --again he refers to the "they" referring to Eastern Service has obtained counsel from -- Schiller states this on a couple of occasions.

I think the only conclusion that can be drawn

from that, your Honor, why would Fayer disclose all this to Goodwin; that is, in an effort to convince him to remain silent and to assure him throughout that evening, assure him that that bribery relationship will not be discussed in any other manner; no other way they can obtain that information.

He assured them, Harry and Rose Bernstein, and in that way the bribery relationship comes out. That's the way the references, no checks, no bank deposits.

Again, your Honor, the interpretation that Mr. Fayer makes, Mr. Roll's attorney-client relationship, his advice to Mr. Goodwin is somewhat beyond belief. Continually pointing out the poor advice he has received, such as at page 30, Mr. Fayer states, "Again, I say to you now with all due, shall I say, respect or lack of respect for the advice you received before, but the best thing to do is to sit and say nothing."

Your Honor, I won't continue just as to the phrases, I understand you are well aware of it and I think you understand the Government's position. It is clear throughout the case that the conversation -- I don't like to dissect it -- and reading, continuing phrases, but that's apparently the only way to do it here. But the general tenor of the whole conversation,

the whole evening was sort of a three-against-one confrontation. That Harry and Rose Bernstein and Mr. Fayer compl ment one another in their statements. Often the most incriminating statement of Mr. Fayer would be, a rate or -- it really appears to be a three-to-one confrontation.

I think it is clear what the reasoning is behind that, that is, to keep on Mr. Goodwin's side. I have nothing further.

MR. KORSHIN: I point out to your Honor that repeatedly Mr. Fayer's position with Mr. Goodwin was that if you are subpoenaed to go before the Grand Jury, then you get an attorney and you follow his advice. At page 18 of the transcript Mr. Fayer said, "If you are subpoenaed before the Grand Jury, if at that point you refuse to testify," at page 20, Goodwin said, that his lawyer had told him, "If you get called, if you go in there --"

Mr. Fayer said at page 50, "Just sit tight if you're called at that point."

Atpage 51, he said, "If you are subpoenaed, I suggest you get a good attorney." And at page 52, he said, "You need somebody that really can proctect you. You want somebody good. If you're served at that point, then you can get somebody good."

And at page 58, he said, "I'm telling you this because they say you're a friend of theirs for many years." And at that same page he said, "Only one person can hurt you and that's you."

Goodwin said at page 64, "So, let's say they call me now." And Fayer answers, "That's where the decision has to be made."

At page 74, Fayer tells him, "Tell your attorney to sit tight for a while."

At page 74, Mr. Fayer said, "In the event you are subpoenaed, in the event you are subpoenaed, get a top drawer man."

And at page 91, he said, "If subpoenas are served, get an attorney and a good one. Believe me, I approve of him. I would absolutely recommend. There is no reason to depend on your attorney. I would absolutely recommend a refusal to talk." That means the interruption stage with the FBI.

MR. WOODFIELD: Just a quick response, your Honor. I am not going to take out statements but to "get a top drawer man" and who in fact is suggested for Mr. Goodwin? Well, an attorney Mr. Fayer suggested, Mr. Korshin. He makes the efforts and gets the attorney. If the effort is when you get a subpoena, "When you get a subpoena, get a top drawer man."

Those are the statements he is saying were made on February 9th, three days later during the phone conversation there is no statement that Mr. Goodwin had been served with a subpoena. There is no question about it, it never comes up. Harry and Rose Bernstein got him an attorney, got him the attorney and said, suggested to get him the attorney.

MR. KORSHIN: Well, obviously an attorney had to be acting far long in advance in the case, whatever occurred.

THE COURT: All right. Thank you, gentlemen. Just a housekeeping problem. Was this material used in the trial that Judge Travia presided at?

MR. WOODFIELD: Material, referring to the tapes, your Honor? No, they were not.

THE COURT: Is Mr. and Mrs. Bernstein's attorney or attorneys aware of these tapes and transcripts?

MR. WOODFIELD: Yes, they all listened to the tapes. They have transcripts of the tapes. I believe they were with Mr. Fayer and all listened to them at the same time, two years ago this coming summer.

THE COURT: Might make them aware of the fact that I've heard them in connection with this case.

MR. WOODFIELD: I will, your Honor.

THE COURT: Because the case has been assigned

to me. A 334

MR. WOODFIELD: Yes.

THE COURT: I think I first ought to indicate what is not in this case. We're not trying the professional capacity of the defendant or his metier. Nor are we trying a disciplinary action. Although there are ample grounds in the transcript and testimony for disciplinary action in the state courts. I assume the United States Attorney will, whatever the outcome of this case, will take appropriate action to transmit those transcripts to the authorities interested in disciplining lawyers.

We're not concerned because no motion to suppress has been made with respect to the legality of the tapes and their use, although I suppose an argument could be made that the tape of February 9th constituted a violation of somebody's Constitutional right to advice from counsel. Whether this defendant raised that point seems doubtful under the circumstances. But the issue has not been raised, so I don't decide it.

There is no attorney-client privilege problem here, although it was considered a conference among clients and attorneys.

Under the definition of Rule 503 of the Rules

as promulgated by the Supreme Court, but not adopted by Congress, Rule 503-A(1) includes within the relationship consultation with a lawyer, "with a view to obtain professional legal services from him."

And under D(5), communications included are those "relevant to a matter of common interest between two or more clients."

Where the clients are consulting in common with an attorney.

Although Goodwin states he wasn't aware of the fact Fayer would be present, I credit that testimony once Fayer was on the scene, Goodwin never told him that he didn't want legal advice or he wasn't concerned about legal advice. So that Fayer under the circumstances possibly might have a doubt about whether he was giving legal advice to Goodwin and Goodwin's implied request, particularly, since apparently this had been the suggestion of Rose Bernstein when Rose Bernstein had contacted Fayer. Because there would be no right to prevent conversations from being revealed since the privilege belongs to the Bernsteins, if any, and to the witness, Goodwin, weighed whatever privilege he had.

But with respect to the problem of Fayer relationship, it is arguable he could have believed that

he was consulted in order to obtain professional legal advice, with the possibility of being retained. The Court recognizes it is the practice of clients from to time, even though they are represented by one attorney, to seek advice from another attorney. Whether that was unethical in the circumstances isn't before us. We're not also concerned here with the problem of punishing the defendant for the advice that he gave, although it may have inhibited the Government in its proper quest for information.

As the Supreme Court has recently pointed out in its opinion of January 15, 1975, in Mannes v. Meyers, 43 Law Week 4143 at page 1448, "The privilege against compelled self-incrimination would be drained of its meaning if counsel, being lawfully present... could be penalized for advising his clients in good faith to assert it. The assertion of the testimonial privilege as many other rights often depends upon legal advice from someone who is trained and skilled in the subject matter and who may offer a more objective opinion... If performance of a lawyer's duty to advise a client that a privilege is available exposes a lawyer to the threat of contempt for giving honest advice, it is hardly debatable that some advocates may lose their zeal for the rightness and

independence. If his lawyer may be punished for advice so given there is a genuine risk the witness exposed to possible self-incrimination or while not being advised of his rights, then the witness may be deprived of the opportunity to decide whether or not to assert the privilege."

Again, on page 4151 Mr. Justice Stuart concurring says: "To punish him for performing his professional duty in good faith will be an arbitrary interference with his client's rights to presence and on retaining counsel, thus a denial of due process of law."

I'm directing myself to the particular questions that are before us. We have first 72 CR 589; in essence that accuses the defendant of aid and abetting Bernstein, Harry and Rose, in providing something of value to Goodwin to prevent him from testifying. Beyond a reasonable doubt the Court would have to find on the basis only of the testimony before us and, of course, without hearing the story of the Bernsteins as subject to that story and testimony in evidence they were offering a job in payment of services in order to induce Goodwin not to testify. But the Court must find a reasonable doubt based upon the testimony of the defendant himself that he truly

believed the Bernsteins' innocence and that he did not understand the nature of the transaction as one to pay Goodwin for not testifying.

In addition, there is a reasonable doubt in the Court's mind as to whether the agreement had not already been made on the 8th with respect to that matter.

The defendant's testimony strikes the Court as being naive to the point of foolishness. It is difficult to believe that anyone could remain in practice for so many years and not understand what the Bernsteins were doing and not believe that the Bernsteins were using him to aid and abet them in their scheme.

Based upon the defendant's demeanor the Court does have a reasonable doubt as to that point. It does have a reasonable doubt as to the state of mind and intention of the defendant Goodwin, although Goodwin did aid and abet the Bernsteins. His intent with respect to corruption as charged in 72 CR 589, he did not beyond a reasonable doubt do it willfully and intentionally.

MR. KORSHIN: When your Honor said Goodwin, I think you meant Fayer.

THE COURT: Fayer, I meant. Accordingly,

72 CR 589 is dismissed. The finding is made in connection with that indictment and, of course, does not indicate any view of the Court with respect to the Bernsteins or Eastern Service Corporation, since they have not had their day in court and it is based solely hypothetically on the facts as reviewed in the prosecution of this defendant; solely for the purposes of this prosecution.

Now, as to 75 CR 43, I find that a very difficult case. And I'm going to reflect on it over the lunch hour and will take a recess until 2:10.

(Luncheon recess taken at 1:10 P.M.)

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A 340

AFTERNOON SESSION

(2:30 P.M.)

THE COURT: Continuing our discussion of 75 CR 43, I find beyond a reasonable doubt that the defendant intended and that everybody present including Goodwin, Rose Bernstein, Harry Bernstein and himself understood he was advising Mr. Goodwin not to testify voluntarily before the Grand Jury, and that this was the great danger that all of them were concerned about.

The references to a subpoena are fully consistent with that finding. What the defendant was telling Goodwin was that Goodwin should not go voluntarily, should not give any information and that if he was subpoenaed, then he would require the advice of counsel who would be supplied at the appropriate time.

This finding of fact beyond a reasonable doubt, however, does not solve the problem in the case raised by a need to show that the advice was given corruptly. 1503, Section 1503 of Title 18 provides:

"Whoever corruptly endeavors to influence any witness, that includes a witness who is a prospective witness about to be called or appear voluntarily."

A 341

The question of what corruptly means is not at all clear from the cases. I started by saying at the beginning of the case, I had read the two cases cited by the attorneys for the Government and curiously in footnote 19 of Mannes vs.Meyers, the Supreme Court majority opinion says, "We recognize that there may be instances where advice to plead the Fifth Amendment could be given in bad faith or could be patently frivolous or for purposes of delay and such instances would present far more difficult issues than here."

And the two cases cited are Cole, 329 F. 2d 437 and Cioffi, 493 F. 2d, 11 at page 1119. I suppose another instance would be suggesting that the Fifth Amendment be pleaded or that a witness not testify when the witness wants to voluntarily appear.

In order not to protect the witness but to protect some other person or entity. But that isn't completely clear here. For one thing, the defendant may have intended primarily to protect Eastern Service Corporation and Harry Bernstein and Rose Bernstein and yet may have also wanted to give Goodwin advice that would assist Goodwin.

Also, it is not clear at the moment, at least, whether the defendant was advising Goodwin as an

attorney or in some attorney-client relationship. The definition of corrupt is not clear from the cases. In Cioffi at 1119 the Court says, Judge Martley defined endeavor as "any effort or any act, however contrived, to obstruct, impede or interfere with a witness," and she told the jurors that any such endeavor is corrupt.

Obviously, that can't be a complete definition or every lawyer telling his client not to volunteer before a Grand Jury or to plead the Fifth Amendment would be guilty of corruption. Then, the Court proves the Cole decision as charged by Judge Martley, "I charge you that while a witness violates no law by claiming the Fifth Amendment privilege against self-incrimination in a Grand Jury, one who bribes, threatens, coerces a witness to claim it or advise with corrupt motive a witness to take it, can and does obstruct or influence the administration of justice."

But that is completely circular because it doesn't tell you what a corrupt motive is. Neither with all due respect does the Second Circuit opinion where Judge Martley -- or does Judge Martley's suggestion? -- same thing is true in the Cole case. It's true of all the other cases that I have been able to find, including U.S. vs. Polacove, 192 F. 2d, 333;

U.S. vs. Cohn,202 F. 2d Sub. Div. 587; Knight, 310 F. 2d, 305; Broadbent vs. U.S., 149 F. 2d, 580.

True of the proposed charge in Devitt, in Blackmore, the Federal Jury Practice & Instructions, 1970, Section 27.08, "If done voluntarily and intentionally, with a bad purpose of accomplishment either with an unlawful end or result or a lawful end or result by some unlawful means or method." Whether this is a lawful means or a lawful end is the exact issue before us.

Again, the charge is, "The motive to act corruptly" is ordinarily a hope or expectation of benefit to one's self or some aid or benefit to another. Obviously, that definition is useless because every attorney would be guilty since he is trying to benefit his client or somebody else. Black's Law Dictionary is useless for corrupt; it means "spoiled, tainted, visited, deprived or debased."

Corrupt intent involves the purpose to violate the law. That doesn't tell you what a violation of the law is, so it's circular.

Webster's Third New International Dictionary, "Corrupt is deprived, evil, weakened, debased," showing the morality characterized by bribery or

selling of political favors or other improper or political or legal actions or arrangements. It does not tell me what is improper.

I haven't received a brief from defendant and I haven't received a satisfactory brief from the Government, although they have done what they could. I don't believe I ought to decide the case until I have the matter brief.

MR. GOULD: Your Honor, in our brief we had the same problem. We did look up the law but looking at the facts pattern, particularly in that Cole case as to what it was they thought added up to corrupt there, and in fact the pattern particularly was identical to --

MR. WOODFIELD: Same with the Cioffi case, your Honor.

THE COURT: Not so sure it was.

MR. GOULD: The facts are --

THE COURT: Those were all people involved in the underlying conspiracy,not in the training.

MR. WOODFIELD: Your Honor, again I'm -- I'm sorry, your Honor; I could have --

THE COURT: Cioffi, yes.

MR. WOODFIELD: Again, your Honor, on Cioffi, at 1119, the fact pattern is very similar in the sense

that that case, the defendant Cioffi was aware of the relationship between Shearer and Mirando. And aware of that relationship, his endeavor to influence the testimony is corrupt and that's our argument here. The fact that Mr. Fayer was aware of the relationship between the Bernsteins and Goodwin and his efforts thereafter to induce Goodwin's testimony is corrupt.

THE COURT: It's so broad to cover every attorney.

MR. WOODFIELD: Excuse me. So broad that every attempt?

THE COURT: Every attorney giving advice

MR. WOODFIELD: No, your Honor. Not when he is representing the individual. Not when he's a client. Not when there is good faith such as Mannes vs. Meyers case. There specifically they rule out six times in that opinion, they say good faith.

THE COURT: What is "good faith" here? That's part of the problem. Obviously the defendant was interested in saving the Bernsteins and the corporation, that's clear. He has admitted it on the witness stand and the transcripts are pregnant with that. It is not clear he wasn't also trying to help the defendant. The prospective witness Goodwin. Not clear to me what the relationship was, that is, whether

he was in a client-attorney relationship. It's a very difficult problem of ethics and law. I really don't have the full brief on it. I find it very troublesome.

MR. GOULD: Your Honor, as to the client-attorney relationship, it was clear from this transcript that Mr. Goodwin had an attorney and had a retained attorney. Now, whether in the future he would --

THE COURT: I know, but you know it doesn't, I'm not sure but you may be right. I'm not sure that under the Code of Professional Responsibility it is improper for one attorney to see a client even though he knows that client is represented by another attorney.

Is that like an attorney seeing a party, an adversary party represented by his client'sattorney, which is clearly unethical? That wasn't that and it's a very curious problem. I really think that you're going to have to brief the case more fully. I think you have to go into the professional responsibility code back there to some extent so we can get some feel for what's right and wrong here, what is corrupt. And you may have to go into some of the background of what is the attorney-client relationship.

When does it start and what is the problem when

you have a conflict of representing people. All of those I adverted to at the beginning of my discussion before I actually turned to 72 CR 589, the first indictment. I'm not making the finding with respect to any of this. The only finding I've made on 75 CR 483, is that he was advising, do not go voluntarily before this Grand Jury.

#11 He was not merely advising him, don't go to the FBI, he was saying, do not testify before the Grand Jury. If you get a subpoena, then we'll get you an attorney.

What is corrupt under those circumstances isn't clear to me and I'd like more guidance.

MR. GOULD: Your Honor, under the -- there is one point in which Mr. Fayer, I believe on cross-examination where they're talking about the part of whether Mr. Goodwin's attorney should investigate further, not talking about the government agency, your own lawyer isn't going to bring. When Mr. Fayer stated, please stay out, Goodwin stayed out. Those people were talking, Harry Bernstein, don't tell him to start investigating.

If your Honor would like for us to you the tape again because I think on the tape it's very clear that statement was not in effect made to Harry

Bernstein. Certainly Goodwin didn't state to Bernstein in the third -- Mr. Fayer, I think that was very heavily the point because we're talking perhaps Mr. Fayer is telling the man's own attorney not to investigate. That certainly couldn't be to protect Mr. Goodwin. I'd like to make that tape available, if you think it's necessary.

THE COURT: No, I don't think it's necessary because I think we're going to have to brief this. I dislike burdening counsel but I am generally puzzled and I never have heard of a case that raises this kind of point.

MR. GOULD: I looked at the ABA Code cover to cover on this, your Honor, and it does talk about opposing parties. Does the spirit of that, the way I read it as Mr. Fayer conceded on cross-examination, there came a time -- I think it is incredible -- he didn't know it -- even assume what he says is accurate it wasn't until somewhere in the middle of this conversation that he was aware, at least, that Mr. Goodwin might have been levelling charges. And the Bernsteins: "we'll deny it." That at least --

THE COURT: But even assuming that's true.

MR. GOULD: Isn't this at variance to Mr. Bernstein's, no question about it?

THE COURT: But is mere conflict that your client might possibly have enough to make advice in good faith to one of them? Whatever good faith means, they're corrupt.

MR. GOULD: Mr. Fayer said himself he got other people different attorneys because there would be a conflict otherwise. And now here he is --

THE COURT: He was suggesting just giving them temporary advice in a sense, in connection with a consultation on whether he should get another attorney. See, part of the problem is that Mr. Goodwin never said to him, I don't want advise from you. I've got my own attorney, in essence, and led him on.

I don't think that's all decisive and it's a very difficult problem, as I say, involving an issue of ethics. In view of the attorney-client relationship as reflected in the privilege, because that's where most of these cases turned up and in criminal law --

MR. GOULD: Will it reflect on ethics whether it has been a violation of the Code or does it reflect on the intent of the act toward an attorney who has been running things the way Mr. Fayer says he has been running Eastern Services, talking to Judge Rifkind who confides in him and tells him what the

client is doing. Somebody goes down to Florida, Atlanta, and he can run this huge business. Would an attorney like that be so naive, choose your own terms, your Honor has to sit there and say, well, this man has an attorney and I'm -- I have the Bernsteins. He's going to level charges against the Bernsteins and the Bernsteins are offering him a job in Florida, offering to pay attorney fees. I'm going to advise him and feel that there is nothing wrong with it.

This is not as he himself stated, several times in the transcript. You know, my reputation, I'm sure he had a very good reputation. He had run a very big company.

THE COURT: Problem I'm concerned with is we're not dealing with a question of whether there is a violation of ethics. That's another question. I don't know whether there is or not. It may have a bearing on whether this is corrupt and we're dealing with a criminal statute. And I haven't found anything very helpful.

MR. KORSHIN: Which may be unconstitutionally vague.

THE COURT: That's possible, too. But I haven't got any brief from. I don't say that critically, I think you handled the case very well and so have the

Government's attorneys. But I would like some help unless you don't feel it warrants a brief.

MR. KORSHIN: I would be very happy to give your Honor a brief but I would like to get the transcript first.

MR. GOULD: Your Honor, do you wish us to give--

THE COURT: Well, I'm not quite sure. I don't think there is any point in making any further findings. I just made that one finding because I think it's critical. If I made that finding adverse to the Government, that would have been the end of it. Because the Government charges, the Grand Jury not Federal Bureau of Investigation -- well, how much time do you want? How much time do you want, and I'm not going to rush you. I'd like a thorough job on it because I'm troubled by it.

MR. KORSHIN: Could I have until the end of --

THE COURT: April 1st, fine.

MR. WOODFIELD: Again, just to enlighten by discussion. This hopefully narrows it down in our vestigation into this work. I take it as the key, as the definition of corrupt --

THE COURT: It seems to me, although I'm not sure, maybe affected to some extent by what the relationship was between this defendant and Goodwin.

MR. WOODFIELD: My interpretation of the word "corrupt" or not interpretation, not defining it but in a sense this statute would be a factual determination; that is, what is in the mind of the inducer such as Mr. Payer.

THE COURT: Can you articulate a standing?

MR. WOODFIELD: I can't articulate but I can say based on the facts of those cases and this case, I don't want to argue now, to end up briefing to you a factual argument. We satisfy the facts of these cases and --

THE COURT: Better do the best you can.

MR. WOODFIELD: Because I believe that a search of the definition of the word "corrupt" would bring results probably similar to yours.

THE COURT: Well, maybe.

MR. WOODFIELD: Factually, we satisfy both Cioffi and Cole.

THE COURT: I prefer to be able to articulate substantive standards before I apply facts to them. And perhaps you can be of some help. Maybe we can move it forward or back.

MR. GOULD: Even our machine didn't help us.

THE COURT: It's a difficult question. We want to get a definition that doesn't make a criminal

of every lawyer.

MR. WOODFIELD: It might be helpful here to get the full charge that was given in Cioffi.

THE COURT: Possible you might, although I might suspect you can find what we just found.

MR. KORSHIN: Your Honor, anticipating what was on your Honor's mind, I didn't make notes of the cases as you gave them. I'd rather not have to wait for the transcript.

THE COURT: You can have this whole thing.

MR. KORSHIN: Just make a list and I'll do it.

THE COURT: If you will, this is what's on my --

MR. WOODFIELD: We have a hung judge.

THE COURT: Not yet, no. Not a hung judge, you have a judge who wants to have time to reflect.

MR. KORSHIN: I assume the defendant's status remains as it was?

THE COURT: Yes.

(Hearing adjourned at 2:25 P.M.)

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A 354

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

against :

ALFRED FAYER :

Defendant :

----------x

75 CR 43
75 CR 589

United States Courthouse
Brooklyn, New York

February 27, 1975
10:00 a.m.

B e f o r e

HONORABLE JACK B. WEINSTEIN

U.S.D.J.

SHELDON SILVERMAN
Acting Official Court Reporter

6

Appearances:

DAVID G. TRAGER, Esq.
United States Attorney for the
Eastern District of New York

By: GARY WOODFIELD, Esq.
DAVID GOULD, Esq.
RONALD DE PETRIS, Esq.

JACK KORSHIN, Esq.
Attorney for Defendant

THE COURT: Although at the last session of this trial I asked for briefs, I have given the case a great deal of consideration in the interim and I had my law clerk call the parties to inform them that briefs will not be necessary because I have decided that under no view of the law and the facts can I determine beyond a reasonable doubt that the defendant is guilty. There is a reasonable doubt necessarily because I must and do credit the defendant's testimony with respect to what the Bernsteins said to him. It is fully consistent with what I heard on the tapes and it's consistent with the way the Bernsteins apparently generally manipulated people.

As far as Goodwin is concerned, the transcript clearly reveals in a sense he led Mr. Fayer on to believe what the Bernsteins had apparently told him and that is that Goodwin wanted legal views from Fayer with respect to whether he should continue to rely upon this attorney or whether he should get a new attorney.

I'm also in part basing the decision on the fact that the attorney that he did procure was a respected member of the bar, his present attorney, who I do not believe was subject to manipulation

by the Bernsteins or by Mr. Fayer.

Given the burden of proof in a criminal case, therefore, the defendant must be found not guilty of both counts.

The United States Attorney is directed to provide a transcript of the record of this case and of the recordings and typed transcript of those recordings to the appropriate disciplinary committee in the Second Department.

I make no findings on whether he violated any legal obligations or moral obligations. That's not my duty.

MR. DE PETRIS: The Government would request under Rule 23(c) special findings of fact.

THE COURT: I have made those findings. What other areas do you want me to find?

MR. DE PETRIS: A number of areas. Should I address your Honor's --

THE COURT: Give me the questions; I'll give you the answers.

MR. DE PETRIS: First, whether or not there was a grand jury proceeding pending in this court at the time.

THE COURT: There was.

MR. DE PETRIS: Is that beyond a reasonable

doubt? A 358

THE COURT: Beyond a reasonable doubt.

MR. DE PETRIS: Second, the defendant was aware of the grand jury proceeding.

THE COURT: I so find beyond a reasonable doubt.

MR. DE PETRIS: Third, Goodwin was a witness in the proceeding within the meaning of the law; that is the new material fact, and was expected to testify.

THE COURT: I so find beyond a reasonable doubt as I indicated at our last session.

MR. DE PETRIS: Fourth, the defendant knew or reasonably expected Goodwin to be a witness.

THE COURT: I so find beyond a reasonsble doubt.

MR. DE PETRIS: And fifth, that the defendant did endeavor to influence Goodwin to take the Fifth Amendment before the grand jury.

THE COURT: I do not find that beyond a reasonable doubt.

MR. DE PETRIS: Not at that point, your Honor, to the question of corruptly, since as your Honor found the last time they did make that effort to influence him --

THE COURT: No, he didn't. That's part of the problem. What he did say was, "Don't go voluntarily," in my opinion. If he went voluntarily, it wouldn't be a Fifth Amendment situation at all. If you're subpoenaed,to get another counsel, that would have been the Fifth Amendment situation, and he in effect was saying over and over again, "Before you decide on the Fifth Amendment, consult other counsel." I can't make that finding beyond a reasonable doubt.

MR. DE PETRIS: Your Honor does not find that Mr. Fayer made an effort to influence Mr. Goodwin to take the Fifth Amendment?

THE COURT: No, what he did was attempt to as I find beyond a reasonable doubt, influence him not to go voluntarily before the grand jury. I think that's the equivalent.

MR. DE PETRIS: Finally, your Honor, would you make a finding concerning his motive, that is, do you find beyond a reasonable doubt that his motive or a substantial or primary motive -- withdrawn. Let me start again.

Do you find beyond a reasonable doubt that the primary motive of Mr. Fayer was to protect the Bernsteins?

THE COURT: I find that that was one of the motives, clearly, but I cannot find beyond a reasonable doubt that that was the only motive, because it seems to me that on the basis of the record it's quite possible to find that he was in good faith or very foolishly trying to advise Goodwin with respect to Goodwin's rights in the hope of assisting Goodwin as a friend of the Bernsteins. That's the problem with the case.

MR. DE PETRIS: Does your Honor make a finding with respect to motive with regard to Mr. Fayer's financial interest with respect to Eastern Service Corporation?

THE COURT: No, I don't think there's anything to that. There's no proof of that sufficient to make any finding.

MR. DE PETRIS: Does your Honor finally, with regard to this count, is your Honor's decision based on your interpretation of the legal meaning of "corruptly"?

THE COURT: No, because I think under any definition of "corruptly" this result would be required. I think, myself, it would be corrupt for him to have advised had he not had as one of the subsidiary motives the giving of legal advice

in good faith to Goodwin; that is, if the whole thing were set up to protect the Bernsteins rather than Goodwin, I would have found him guilty, but I do not think that, considering the whole matter, there is a very substantial doubt about whether he was not also concerned with Goodwin in good faith as a lawyer, although a lawyer acting so foolishly as to almost defy belief. But being foolish is not a crime.

MR. DE PETRIS: Might I have a moment, your Honor.

THE COURT: Yes.

MR. DE PETRIS: Does your Honor make any finding with respect to which of the two motives that your Honor has referred to protecting the Bernsteins and advising Goodwin as a lawyer, as a friend of the Bernsteins, as to which was bribery?

THE COURT: No, I can't. They were both involved, intertwined. I couldn't make that determination, certainly not beyond a reasonable doubt.

MR. DE PETRIS: Finally, your Honor, the Government would ask, and I use the word "finally" quite a bit. I'm sorry about that. The Government would ask that your Honor make a finding, reach

a verdict and special findings of fact with respect to the lesser included offense under Section 201(h) of Title 18.

I was not here last Thursday when your Honor made a ruling on the bribery count, and so I have ordered the transcript, but it has not been reached yet, but I have a general idea what your findings were with respect to that count. I would ask your Honor to make that specific finding.

MR. KORSHIN: Might I have a look at the section? By number I don't remember it.

THE COURT: I make a finding under 201(h) the Government did not prove its case beyond a reasonable doubt for the reasons I stated at the last session.

MR. DE PETRIS: I would ask for special findings with respect to that count, too.

Does your Honor find beyond a reasonable doubt there was a grand jury proceeding in this court?

THE COURT: I do.

MR. DE PETRIS: Does your Honor find beyond a reasonable doubt the defendant was aware of that proceeding?

THE COURT: I do.

MR. DE PETRIS: Does your Honor find beyond a reasonable doubt that Mr. Goodwin was a witness in that proceeding?

THE COURT: I do.

MR. DE PETRIS: Does your Honor find beyond a reasonable doubt that the defendant knew or reasonably expected Goodwin to be a witness?

THE COURT: I do.

MR. DE PETRIS: As I understand it, your Honor found -- made a finding of fact last time beyond a reasonable doubt that Mr. Fayer did aid and abet the Bernsteins' offer of something of value; that is --

THE COURT: No, I did not so find. I said he was aware of it, but he did not aid or abet and in my opinion the decision had been made before he even came into the picture.

MR. DE PETRIS: Does your Honor find beyond a reasonable doubt that on the date in question on the tape that Mr. Fayer participated in an offer of something of value on that date?

THE COURT: I do not.

MR. DE PETRIS: Does your Honor find beyond a reasonable doubt that the Bernsteins made an offer of something of value on that date?

THE COURT: They have made it on that date and they made it before. They made it the day before and confirmed it on that date.

MR. DE PETRIS: Does your Honor find beyond a reasonable doubt that Mr. Fayer participated in that discussion?

THE COURT: He was present, but he did not participate in that offer or in renewal of the offer.

MR. DE PETRIS: As I understand your findings of last week, you found there was a reasonable doubt on the question of willfulness and specific intent.

THE COURT: That's correct.

MR. DE PETRIS: So the Government was pointing out today under the gratuity count, willfulness, specific intent is not an element of crime, and therefore we would submit that Mr. Farley is guilty beyond a reasonable doubt.

THE COURT: He isn't. The Bernsteins, as it turned out from the tape, were vicious manipulative people. You can't find a lawyer guilty of crimes because he is in good faith advising a client who's going ahead and continuing to commit other independant crimes. I just don't find beyond a reasonable doubt that this defendant was engaged in a conspiracy

with the Bernsteins. I don't think that was his role here, beyond a reasonable doubt. With the preponderance standard or clear and convincingly standard, which may apply in a disciplinary hearing, and I certainly said I make no such findings. I'm dealing with beyond a reasonable doubt standards in a criminal case.

MR. DE PETRIS: Does your Honor find the offer made on the date of the tape -- find beyond a reasonable doubt that the offer that was made on the date of the tape with respect to the attorney's fees and private employment was made for or because of the testimony to be given by Goodwin before the grand jury?

THE COURT: Which tape? There were two tapes. The offer was made --

MR. DE PETRIS: The restaurant tape.

THE COURT: An offer was made by the Bernsteins the day before and it was renewed again in a sense by reminding Goodwin of it. This defendant, I don't find, participated in it beyond a reasonable doubt.

MR. DE PETRIS: Your Honor, as I recall the offer of a job with the Bernsteins was on the 9th, the date Mr. Fayer --

THE COURT: It's clear from the tape it had been a continuing offer they made before, but that was an understanding they had, at least I don't find beyond a reasonable doubt to the contrary.

MR. DE PETRIS: Is your Honor's decision based upon the fact this was a continuing crime and therefore as a matter of law Mr. Fayer could not participate in it --

THE COURT: No, that is not so. He could have been an aider and abettor even if it was continuing.

MR. DE PETRIS: Your Honor, that is all the special findings. I would like to advise the Court we do intend to refer it to the Bar Association. Too, we're going to study the transcript. I assume your Honor is aware of the Supreme Court opinion in the U.S. v. Jenkins, which came down this week. If not, I have a copy of it here.

THE COURT: Let me see it. I have read all the advance sheets. Let me see it.

(A document is handed to the Court.)

THE COURT: No, I haven't seen Jenkins.

MR. DE PETRIS: I would then ask your Honor to read it.

THE COURT: It's marked the 25th. That was --

I haven't gotten my copy.

MR. WOODFIELD: This was Telexed from Washington.

THE COURT: You have all these technicians, that's our disadvantage, learning what happens even before it happens, sometimes.

MR. WOODFIELD: Try to.

THE COURT: What difference does this make?

MR. DE PETRIS: Under that decision it sets forth the situation in which the Government may appeal --

THE COURT: I'm delighted to have you appeal in all situations. I do the best I can, and I'm continually educated by your fine staff and by the Court of Appeals, and it's a delight to me to have that happen.

MR. DE PETRIS: I would ask your Honor to read the last paragraph on page 4311.

THE COURT: If I have misconceived the law, I'll be delighted to change the decision.

MR. DE PETRIS: We'll study the transcript to see if an appeal --

THE COURT: The reason I have been so acquiescent in responding to your questions is that I assume it's for that purpose.

Does the defendant have any questions that he wishes the court to decide?

MR. KORSHIN: No, sir.

MR. DE PETRIS: Finally, we also intend to study the transcript of Mr. Fayer's testimony with the consideration as to whether or not perjury was committed and consideration as to whether or not to submit that to the grand jury.

THE COURT: Of course, that's up to you.

MR. DE PETRIS: Thank you, your Honor.

THE COURT: Thank you very much.

MR. KORSHIN: Thank you.

THE DEFENDANT: Thank you, your Honor.

A 369

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEB 27 1975

TIME A.M.
P.M.

THE UNITED STATES OF AMERICA

VS

ALFRED FAYER

JUDGMENT OF ACQUITTAL

75 CR 43

M'FILMED

The ~~information~~ indictment herein having regularly come on for trial before the Honorable JACK B. WEINSTEIN ~~and a jury~~ United States District Judge, without a jury, and a verdict having been rendered finding the defendant

ALFRED FAYER

not guilty,

IT IS ADJUDGED that the defendant ALFRED FAYER

~~are~~ is not guilty of the charge in said ~~information~~ indictment.

DATED: Brooklyn, New York

February 27, 1975

Jack Weinstein (5)

UNITED STATES DISTRICT JUDGE

This order constitutes a judgment of acquittal after trial by the court

February 28, 1975

Jack B. Weinstein

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

LYDIA FERNANDEZ being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 30th day of May 1975 he served ~~a~~ two copies copy of the within

Joint Appendix

by placing the same in a properly postpaid franked envelope addressed to:

Jack Korshin, Esq.
370 East Old Country Road
Mineola, N. Y. 11501

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, Washington Street, Borough of Brooklyn, County of Kings, City of New York.

Lydia Fernandez
LYDIA FERNANDEZ

Sworn to before me this
30th day of May 19 75

Olga P. Morgan

77